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Halsbury's Laws of England/LIST OF REPORTS AND OTHER SOURCES USED IN HALSBURY'S LAWS OF ENGLAND

LIST OF REPORTS AND OTHER SOURCES USED IN HALSBURY'S LAWS OF ENGLAND

This list contains particulars of the reports and certain other sources to which reference is made in Halsbury's Laws of England together with the abbreviations used in connection therewith. The period covered by a series of reports, where it has been possible accurately to ascertain it, is also generally noted against the name of the report. The list also contains particulars of the reports and journals referred to in the annual Cumulative Supplement, Annual Abridgment and Current Service.

A...	Atlantic Reporter (USA), 1885-1938
A 2d...	Atlantic Reporter, Second Series (USA), 1938-(current)
A Crim R...	Australian Criminal Reports, 1979-(current)
ABC...	Australian Bankruptcy Cases, 20 vols, 1928-1964
Abr...	Halsbury's Laws of England Annual Abridgment
AC (preceded by date)...	Law Reports, Appeal Cases, House of Lords and Privy Council, 1890-(current) (eg [1891] AC)
ACD...	Administrative Court Digest 2001-(current)
ACLR...	Australian Current Law Review
ACTR...	Australian Capital Territory Reports 1973-(current)
AD...	South African Law Reports, Appellate Division, 1910-1946
ADRLJ...	Arbitration and Dispute Resolution Law Journal
AITR...	Australian and New Zealand Income Tax Reports, 10 vols, 1936-1968
AJIL...	American Journal of International Law, 1907-(current)
AJR...	Australian Jurist Reports, 5 vols, 1870-1874
ALJ...	Australian Law Journal, 1927-(current)
ALJR...	Australian Law Journal Reports, 1958-(current)
ALR...	Argus Law Reports (Australia), 1895-(current)
ALR...	American Law Reports Annotated, 1913-1947
ALR...	Australian Law Reports, 1973-(current)
ALR 2d...	American Law Reports Annotated, Second Series, 1948-1965
ALR 3d...	American Law Reports Annotated, Third Series, 1965-(current)
ALT...	Australian Law Times, 49 vols 1879-1928
AR...	Ontario Appeal Reports, 27 vols, 1876-1900
AR (NSW)...	Industrial Arbitration Reports (New South Wales), 1902-1967
ATC...	Annotated [Accountant to 1926] Tax Cases, 1922-1976
Act...	Acton's Reports, Prize Causes, 2 vols, 1809-1811 (ER vol 12)
Ad & El...	Adolphus and Ellis's Reports, King's Bench and Queen's Bench, 12 vols, 1834-1842 (ER vols 110-113)
Adam...	Adam's Justiciary Reports (Scotland), 7 vols, 1893-1916
Add...	Addams' Ecclesiastical Reports, 3 vols, 1822-1826 (ER vol 162)
Agra...	Agra High Court (India), 4 vols, 1866-1868

Agra FB...	Agra High Court, Full Bench (India), 1866-1868
Alc & N...	Alcock and Napier's Reports, King's Bench (Ireland), 1 vol, 1831-1833
Alc Reg Cas...	Alcock's Registry Cases (Ireland), 1 vol, 1832-1841
Aleyn...	Aleyn's Reports, King's Bench, fol, 1 vol, 1646-1649 (ER vol 82)
All...	New Brunswick Reports (Allen), 6 vols, 1848-1866
All ER (preceded by date)...	All England Law Reports, 1936-(current) (eg [1936] 2 All ER)
All ER (Comm)...	All England Law Reports (Commercial Cases), 1999-(current)
All ER (D)...	All England Law Reports Direct, 1998-(current) (eg [2005] All ER (D) XX (month))
All ER (EC)...	All England Law Reports European Cases, 1995-(current)
All ER Rep...	All England Law Reports Reprint, 36 vols, 1843-1935
All ER Rep Ext...	All England Law Reports Reprint Extension volumes (Australia), 16 vols, 1861-1935
Alta LR...	Alberta Law Reports, 26 vols, 1908-1932
Am R...	American Reports, 1868-1887
Amb...	Ambler's Reports, Chancery, 1 vol, 1716-1783 (ER vol 27)
And...	Anderson's Reports, Common Pleas, fol, 2 parts in one vol, 1535-1605 (ER vol 123)
Andr...	Andrews' Reports, King's Bench, fol, 1 vol, 1737-1740 (ER vol 95)
Anst...	Anstruther's Reports, Exchequer, 3 vols, 1792-1797 (ER vol 145)
App Cas...	Law Reports, Appeal Cases, House of Lords and Privy Council, 15 vols, 1875-1890
App Ct Rep...	Appeal Court Reports (New Zealand), 3 vols, 1867-1877
App D...	South African Law Reports, Appellate Division, 1910-1946
App Div...	Appellate Division Reports, New York Supreme Court, 1896-1955
App Div 2d...	Appellate Division Reports, New York Supreme Court, Second Series, 1955-(current)
Architects' LR...	Architects' Law Reports, 4 vols, 1904-1909
Argus LR...	Argus Law Reports (Australia)
Arkley...	Arkley's Justiciary Reports (Scotland), 1 vol, 1846-1848
Arm M & O...	Armstrong, Macartney, and Ogle's Civil and Criminal Reports (Ireland), 1 vol, 1840-1842
Arn...	Arnold's Reports, Common Pleas, 2 vols, 1838-1839
Arn & H...	Arnold and Hodge's Reports, Queen's Bench, 1 vol, 1840-1841
Ashb...	Ashburner's Principles of Equity, 2nd Edn, 1933
Asp MLC...	Aspinall's Maritime Law Cases, 22 vols, 1870-1943
Atk...	Atkyn's Reports, Chancery, 3 vols, 1736-1754 (ER vol 26)
Aust Lawyer...	Australian Lawyer, 1965-1968
Av L Rep...	Aviation Law Reporter (USA)
Avi Cas...	Aviation Cases
AVMA...	AVMA Medical and Legal Journal
Ayl Pan...	Ayliffe's New Pandect of Roman Civil Law, 1734
Ayl Par...	Ayliffe's Parergon Juris Canonici Anglicani, 1734
B...	Barber's Gold Law Cases (South Africa), 1883-1903
B & Ad...	Barnewall and Adolphus' Reports, King's Bench, 5 vols, 1830-1834 (ER vols 109-110)

B & Ald...	Barnewall and Alderson's Reports, King's Bench, 5 vols, 1817-1822 (ER vol 106)
B & C...	Barnewall and Cresswell's Reports, King's Bench, 10 vols, 1822-1830 (ER vols 107-109)
B & CR (preceded by date)...	Reports of Bankruptcy and Companies Winding up Cases, 20 vols, 1918-1941 (eg [1918-1919] B & CR)
B & S...	Best and Smith's Reports, Queen's Bench, 10 vols, 1861-1870
BC (NSW)...	New South Wales Bankruptcy Cases, 9 vols, 1890-1899
BCC...	British Company Law Cases, 1983-(current)
BCLC...	Butterworths Company Law Cases, 1983-(current)
BCR...	British Columbia Reports, 63 vols, 1867-1947
B Dig...	Bose's Digest (India)
BHRC...	Butterworths Human Rights Cases, 1999-(current)
BJAL...	British Journal of Administrative Law, 1954-(current)
BLR...	Bengal Law Reports, 1868-1875
BLR...	Building Law Reports, 1976-(current)
BLR...	Business Law Review, 1954-(current)
BLRAC...	Bengal Law Reports, Appeal Cases
BLRPC...	Bengal Law Reports, Privy Council
BLR Sup Vol...	Bengal Law Reports, Supp Vol, 1863-1868
BMLR...	Butterworths Medico-Legal Reports, 1992-(current)
BPIR...	Bankruptcy and Personal Insolvency Reports
BRA...	Butterworths' Rating Appeals, 4 vols, 1913-1931
BRD...	Building Regulations Decisions. Selected Decisions under the Building Regulations 1965, published by HMSO
BTLC...	Butterworths' Trading Law Cases, 1986-1988
BTR...	British Tax Review, 1956-(current)
BTR...	Brewers' Trade Review
BTRLR...	Brewers' Trade Review Law Reports, 22 vols, 1913-1937
BWCC...	Butterworths' Workmen's Compensation Cases, 41 vols, 1907-1949
BYIL...	British Yearbook of International Law
Bac Abr...	Bacon's Abridgment
Bail Ct Cas...	Bail Court Cases (Lowndes and Maxwell), 1 vol, 1852-1854
Baild...	Baildon's Select Cases in Chancery, 1364-1471 (Selden Society, Vol X)
Ball & B...	Ball and Beatty's Reports, Chancery (Ireland), 2 vols, 1807-1814
Bankr & Ins R...	Bankruptcy and Insolvency Reports, 2 vols, 1853-1855
Bar & Arn...	Barron and Arnold's Election Cases, 1 vol, 1834-1846
Bar & Aust...	Barron and Austin's Election Cases, 1 vol, 1842
Barn Ch...	Barnardiston's Reports, Chancery, fol, 1 vol, 1740-1741 (ER vol 27)
Barn KB...	Barnardiston's Reports, King's Bench, fol, 2 vols, 1726-1734 (ER vol 94)
Barnes...	Barnes' Notes of Cases of Practice, Common Pleas, 1 vol, 1732-1760 (ER vol 94)
Batt...	Batty's Reports, King's Bench (Ireland), 1 vol, 1825-1826
Beat...	Beatty's Reports, Chancery (Ireland), 1 vol, 1813-1830
Beav...	Beavan's Reports, Rolls Court, 36 vols, 1838-1866 (ER vols 48-55)
Beav & Wal...	Beavan and Walford's Railway Parliamentary Cases, 1 vol, 1846

Beaw...	Beawes' Lex Mercatoria Rediviva
Bell CC...	T Bell's Crown Cases Reserved, 1 vol, 1858-1860 (ER vol 169)
Bell Ct of Sess...	R Bell's Decisions, Court of Session (Scotland), 1 vol, 1790-1792
Bell Ct of Sess fol...	R Bell's Decisions, Court of Session (Scotland), fol, 1 vol, 1794-1795
Bell Dict Dec...	S S Bell's Dictionary of Decisions, Court of Session (Scotland), 2 vols, 1808-1833
Bell Sc App...	S S Bell's Scotch Appeals, House of Lords, 7 vols, 1842-1850
Bellewe...	Bellewe's Cases <i>temp</i> Richard II, King's Bench, 1 vol, 1378-1400 (ER vol 72)
Belt's Sup...	Belt's Supplement to Vesey Sen, Chancery, 1 vol, 1746-1756 (ER vol 28)
Ben...	Benloe's Reports, Common Pleas, fol, 1 vol, 1532-1579 (ER vol 123)
Ben & D...	Benloe and Dalison, 1 vol, 1486-1580
Benl...	Benloe's (or Bendloe's) Reports, King's Bench, fol, 1 vol, 1530-1627 (ER vol 73)
Ber...	New Brunswick Reports (Berton), 1 vol, 1835-1839
Bing...	Bingham's Reports, Common Pleas, 10 vols, 1822-1834 (ER vols 130-131)
Bing NC...	Bingham's New Cases, Common Pleas, 6 vols, 1834-1840 (ER vols 131-133)
Biss & Sm...	Bisset and Smith's Digest (South Africa)
Bitt Prac Cas...	Bittleston's Practice Cases in Chambers under the Judicature Acts 1873 and 1875, 1 vol, 1875-1876
Bitt Rep in Ch...	Bittleston's Reports in Chambers (Queen's Bench Division), 1 vol, 1883-1884
Bl Com...	Blackstone's Commentaries
Bl D & Osb...	Blackham, Dundas, and Osborne's Reports, Practice and Nisi Prius (Ireland), 1 vol, 1846-1848
Bli...	Bligh's Reports, House of Lords, 4 vols, 1819-1821 (ER vol 4)
Bli NS...	Bligh's Reports, House of Lords, New Series, 11 vols, 1827-1837 (ER vols 4-6)
Bluett...	Bluett's Isle of Man Cases, 1 vol, 1847
Bom...	Bombay High Court Reports, 1862-1875
Bom AC...	Bombay Reports, Appellate Jurisdiction
Bom Cr Ca...	Bombay Reports, Crown Cases
Bom OC...	Bombay Reports, Original Civil Jurisdiction
Bos & P...	Bosanquet and Puller's Reports, Common Pleas, 3 vols, 1796-1804 (ER vols 126-127)
Bos & PNR...	Bosanquet and Puller's New Reports, Common Pleas, 2 vols, 1804-1807 (ER vol 127)
Bott...	Bott's Laws Relating to the Poor, 2 vols, 6th Edn, 1827
Bourke...	Bourke's Reports (India), 1864-1866
Br & Col Pr Cas...	British and Colonial Prize Cases, 3 vols, 1914-1919
Bract...	Bracton De Legibus et Consuetudinibus Angliæ
Bro Abr...	Sir R Brooke's Abridgment
Bro CC...	W Brown's Chancery Reports, 4 vols, 1778-1794 (ER vols 28-29)
Bro Ecc Rep...	W G Brooke's Ecclesiastical Reports, Privy Council, 1 vol, 1850-1872

Bro NC...	Sir R Brooke's New Cases, 1 vol, 1515-1558 (ER vol 73)
Bro Parl Cas...	J Brown's Cases in Parliament, 8 vols, 1702-1800 (ER vols 1-3)
Bro Supp to Mor...	M P Brown's Supplement to Morison's Dictionary of Decisions, Court of Session (Scotland), 5 vols, 1622-1780
Bro Synop...	M P Brown's Synopsis of Decisions, Court of Session (Scotland), 4 vols, 1532-1827
Brod & Bing...	Broderip and Bingham's Reports, Common Pleas, 3 vols, 1819-1822 (ER vol 129)
Brod & F...	Broderick and Fremantle's Ecclesiastical Reports, Privy Council, 1 vol, 1705-1864
Broun...	Broun's Justiciary Reports (Scotland), 2 vols, 1842-1845
Brown & Lush...	Browning and Lushington's Reports, Admiralty, 1 vol, 1863-1866 (ER vol 167)
Brownl...	Brownlow and Goldesborough's Reports, Common Pleas, 2 parts, 1569-1624 (ER vol 123)
Bruce...	Bruce's Decisions, Court of Session (Scotland), 1714-1715
Buch...	Buchanan's Reports of the Supreme Court of the Cape of Good Hope, 1868-1879
Buch AC...	Buchanan's Reports of Appeal Court (Cape), 1880-1910
Buchan...	Buchanan's Reports, Court of Session and Justiciary (Scotland), 1806-1813
Buck...	Buck's Cases in Bankruptcy, 1 vol, 1816-1820
Bull NP...	Buller's Nisi Prius (published, London, 1772)
Bulst...	Bulstrode's Reports, King's Bench, fol, 3 parts in 1 vol, 1610-1626 (ER vols 80-81)
Bunb...	Bunbury's Reports, Exchequer, fol, 1 vol, 1713-1741 (ER vol 145)
Burr...	Burrow's Reports, King's Bench, 5 vols, 1756-1772 (ER vols 97-98)
Burr SC...	Burrow's Settlement Cases, King's Bench, 1 vol, 1733-1776
Burrell...	Burrell's Reports, Admiralty, ed by Marsden, 1 vol, 1648-1840 (ER vol 167)
C & P...	Carrington and Payne's Reports, Nisi Prius, 9 vols, 1823-1841 (ER vols 171-173)
CAR...	Commonwealth Arbitration Reports, 110 vols, 1905-1965
CB...	Common Bench Reports, 18 vols, 1845-1856 (ER vols 135-139)
CBNS...	Common Bench Reports, New Series, 20 vols, 1856-1865 (ER vols 140-144)
CBR...	Canadian Bankruptcy Reports, Annotated, 1920-(current)
CBR (NS)...	Canadian Bankruptcy Reports, New Series, 1960-(current)
CCC...	Canadian Criminal Cases, Annotated, 1892-1970
CCC (2d)...	Canadian Criminal Cases, Annotated (Second Series), 1971-1983
CCC (3d)...	Canadian Criminal Cases, Annotated (Third Series) 1983-(current)
CC Ct Cas...	Central Criminal Court Cases (Sessions Papers), 1834-1913
CCLR...	Consumer Credit Law Reports, 1984-(current)
CILL...	Construction Industry Law Letter
CJQ...	Civil Justice Quarterly

CL (preceded by date)...	Current Law, 1947-(current) (eg [1948] CL)
CL Ch...	Common Law Chambers (Canada)
CLC...	Commercial Law Cases
CLJ...	Cambridge Law Journal
CLJ...	Cape Law Journal, 1884-1900
CLJNS...	Canada Law Journal, New Series, 58 vols, 1865-1922
CLJOS...	Canada Law Journal, Old Series, 10 vols, 1855-1864
CLP...	Computer Law and Practice
CLR...	Common Law Reports, 3 vols, 1853-1855
CLR...	Commonwealth Law Reports, 1903-(current)
CLR...	Calcutta Law Reporter, 1877-1884
CLR...	Cape Law Reports
CLSR...	Computer Law and Security Report
CLT...	Canadian Law Times, 42 vols, 1881-1922
CLT Occ N...	Canadian Law Times, Occasional Notes, 1881-1909
CLY (preceded by date)...	Current Law Year Book, 1947-(current)
CML Rev (preceded by date)...	Common Market Law Review, 1993-(current) (eg [2005] CML Rev)
CMLR (preceded by date)...	Common Market Law Reports, 1962-(current) (eg [1962] CMLR)
COD...	Crown Office Digest, 1988-2001
CP...	Upper Canada Common Pleas, 32 vols, 1850-1881
CPD...	Law Reports, Common Pleas Division, 5 vols, 1875-1880
CPD...	Cape Provincial Division Reports, 1910-1946
CPLR...	Civil Practice Law Reports
CPR...	Canadian Patent Reporter, 1941-(current)
CR...	Clinical Risk
CR...	Report of the Chief Registrar of Friendly Societies
CR...	Criminal Reports (Canada), 1946-1966
CR (NS)...	Criminal Reports, New Series (Canada), 1967-1978
CR [date] AC...	Canadian Reports, Appeal Cases, 24 vols, 1807-1913
CRC...	Canadian Railway Cases, 49 vols, 1902-1939
CRTC...	Canadian Railway and Transport Cases, 22 vols, 1940-1954
CTBR...	Commonwealth Taxation Boards of Review, 1925-1986
CTC...	Canada Tax Cases, 1917-(current)
CTLR...	Computer and Telecommunications Law Review
CTR...	Cape Times Reports of the Supreme Court of the Cape of Good Hope, 1891-1910
CWN...	Calcutta Weekly Notes, 1896-(current)
Cab & El...	Cababé and Ellis's Reports, Queen's Bench Division, 1 vol, 1882-1885
Cald Mag Cas...	Caldecott's Magistrates' Cases, 1 vol, 1776-1785
Calth...	Calthrop's City of London Cases, King's Bench, 1 vol, 1609-1618 (ER vol 80)
Cam Cas...	Cameron's Supreme Court Cases (Canada), 1 vol, 1874-1905
Cam Prac...	Cameron's Supreme Court Practice (Canada)
Camp...	Campbell's Reports, Nisi Prius, 4 vols, 1807-1816 (ER vols 170- 171)
Can CC...	Canadian Criminal Cases, Annotated, 1892-(current)
Can Com Cas...	Commercial Law Reports of Canada, 4 vols, 1901-1905
Can Crim Cas...	Canadian Criminal Cases, Annotated, 1892-(current)
Can Gaz...	Canada Police Gazette, 1926-(current)
Can Ry Cas...	Canadian Railway Cases, 49 vols, 1902-1939

Car & Kir...	Carrington and Kirwan's Reports, Nisi Prius, 3 vols, 1843-1853 (ER vols 174-175)
Car & M...	Carrington and Marshman's Reports, Nisi Prius, 1 vol, 1841-1842 (ER vol 174)
Car CL...	Carrington's Treatise on Criminal Law (Canada)
Card Doc Ann...	Cardwell's Documentary Annals of the Reformed Church of England, 2 vols, 1546-1716
Carp Pat Cas...	Carpmael's Patent Cases, 2 vols, 1602-1842
Cart...	Carter's Reports, Common Pleas, fol, 1 vol, 1664-1675 (ER vol 124)
Cart...	Cases on British North America Act (Cartwright) (Canada), 1868-1896
Carth...	Carthew's Reports, King's Bench, fol, 1 vol, 1687-1700 (ER vol 90)
Cary...	Cary's Reports, Chancery, 1 vol, 1557-1604 (ER vol 21)
Cas in Ch...	Cases in Chancery, fol, 3 parts, 1660-1697 (ER vol 22)
Cas Pract KB...	Cases of Practice, King's Bench, 1 vol, 1655-1775
Cas Sett...	Cases of Settlements and Removals, 1 vol, 1685-1727
Cas <i>temp</i> Finch...	Cases <i>temp</i> Finch, Chancery, fol, 1 vol, 1673-1680 (ER vol 23)
Cas <i>temp</i> King...	Select Cases <i>temp</i> King, Chancery, fol, 1 vol, 1724-1733 (ER vol 25)
Cas <i>temp</i> Talb...	Cases in Equity <i>temp</i> Talbot, fol, 1 vol, 1730-1737 (ER vol 25)
Cass Dig...	Cassells' Digest (Canada), 1875-1893
Ch (preceded by date)...	Law Reports, Chancery Division, 1890-(current) (eg [1891] Ch)
Ch App...	Law Reports, Chancery Appeals, 10 vols, 1865-1875
Ch Cas in Ch...	Choyce Cases in Chancery, 1 vol, 1557-1606 (ER vol 21)
Ch Ch...	Upper Canada Chancery Chambers Reports, 4 vols, 1857-1872
ChD...	Law Reports, Chancery Division, 45 vols, 1875-1890
Ch Rob...	Christopher Robinson's Reports, Admiralty, 6 vols, 1798-1808 (ER vol 165)
Char Cham Cas...	Charley's Chamber Cases, 2 vols, 1875-1876
Char Pr Cas...	Charley's New Practice Reports, 3 vols, 1875-1876
Chip...	New Brunswick Reports (Chipman), 1 vol, 1825-1835
Chit...	Chitty's Practice Reports, King's Bench, 2 vols, 1770-1822
Cl & Fin...	Clark and Finnely's Reports, House of Lords, 12 vols, 1831-1846 (ER vols 6-8)
Cl & Sc Dr Cas...	Clark and Scully's Drainage Cases (Canada), 2 vols, 1865-1872
Clay...	Clayton's Reports and Pleas of Assizes at Yorke, 1 vol, 1631-1650
Clif & Rick...	Clifford and Rickards' Locus Standi Reports, 3 vols, 1873-1884
Clif & Steph...	Clifford and Stephens' Locus Standi Reports, 2 vols, 1867-1872
Co A...	Cook's Lower Canada Admiralty Court Cases, 1 vol, 1873-1884
Co Ent...	Coke's Entries
Co Inst...	Coke's Institutes
Co Litt...	Coke on Littleton (1 Inst)
Co Rep...	Coke's Reports, 13 parts, 1572-1616 (ER vols 76-77)
Coch...	Nova Scotia Reports (Cochran), 1 vol, 1859

Cockb & Rowe...	Cockburn and Rowe's Election Cases, 1 vol, 1833
Col LJ...	Colonial Law Journal (New Zealand), 1 vol, 1865-1875
Coll...	Collyer's Reports, Chancery, 2 vols, 1844-1846 (ER vol 63)
Coll Jurid...	Collectanea Juridica, 2 vols, 1791-1792
Colles...	Colles' Cases in Parliament, 1 vol, 1697-1713 (ER vol 1)
Colt...	Coltman's Registration Cases, 1 vol, 1879-1885
Com...	Comyns' Reports, King's Bench, Common Pleas, and Exchequer, fol, 2 vols, 1695-1740 (ER vol 92)
Com Cas...	Commercial Cases, 45 vols, 1895-1941
Com Dig...	Comyns' Digest
Com LR...	Commercial Law Reporter (South Africa), 1948-1958
Comb...	Comberbach's Reports, King's Bench, fol, 1 vol, 1685-1698 (ER vol 90)
Comp Law...	The Company Lawyer
Comms L (preceded by date)...	Communications Law (eg (2005) 6 Comms L)
Comp Lawyer...	Company lawyer
Con & Law...	Connor and Lawson's Reports, Chancery (Ireland), 2 vols, 1841-1843
ConLR...	Construction Law Reports, 1985-(current)
Cong Dig...	Congdon's Digest (Canada), 1803-1888
Const...	Const's edition of Bott's Poor Laws, 3 vols, 1807
Const LJ...	Construction Law Journal, 1984-(current)
Conv...	Conveyancer and Property Lawyer
Cooke & Al...	Cooke and Alcock's Reports, King's Bench (Ireland), 1 vol, 1833-1834
Cooke Pr Cas...	Cooke's Practice Reports, Common Pleas, 1 vol, 1706-1747 (ER vol 125)
Cooke Pr Reg...	Cooke's Practical Register of the Common Pleas, 1 vol, 1702-1742
Coop G...	G Cooper's Reports, Chancery, 1 vol, 1792-1815 (ER vol 35)
Coop Pr Cas...	C P Cooper's Reports, Chancery Practice, 1 vol, 1837-1838 (ER vol 47)
Coop <i>temp</i> Brough...	C P Cooper's Cases <i>temp</i> Brougham, Chancery, 1 vol, 1833-1834 (ER vol 47)
Coop <i>temp</i> Cott...	C P Cooper's Cases <i>temp</i> Cottenham, Chancery, 2 vols, 1846-1848 (and miscellaneous earlier cases) (ER vol 47)
Cor...	Coryton's Reports (India), 1864-1865
Corb & D...	Corbett and Daniell's Election Cases, 1 vol, 1819
Correspondances Jud...	Correspondances Judiciaries (Canada)
Counsel...	Counsel
Couper...	Couper's Justiciary Reports (Scotland), 5 vols, 1868-1885
Cout...	Coutlees' Unreported Cases (Canada), 1 vol, 1875-1907
Cout Dig...	Coutlees' Digest (Canada), 2 vols, 1875-1908
Cowp...	Cowper's Reports, King's Bench, 2 vols, 1774-1778 (ER vol 98)
Cox & Atk...	Cox and Atkinson's Registration Appeal Cases, 1 vol, 1843-1846
Cox CC...	E W Cox's Criminal Law Cases, 31 vols, 1843-1941
Cox Eq Cas...	S C Cox's Equity Cases, 2 vols, 1745-1797 (ER vols 29-30)
Cox M & H...	Cox, Macrae, and Hertslet's County Court Cases and Appeals, 1 vol, 1846-1852
Cr & J...	Crompton and Jervis's Reports, Exchequer, 2 vols, 1830-

Cr & M...	1832 (ER vols 148-149) Crompton and Meeson's Reports, Exchequer, 2 vols, 1832-1834 (ER vol 149)
Cr & Ph...	Craig and Phillips' Reports, Chancery, 1 vol, 1840-1841 (ER vol 41)
Cr App Rep...	Criminal Appeal Reports, 1908-(current)
Cr App Rep (S)...	Criminal Appeal Reports (Sentencing), 1979-(current)
Cr M & R...	Crompton, Meeson, and Roscoe's Reports, Exchequer, 2 vols, 1834-1835 (ER vols 149-150)
Craw & D...	Crawford and Dix's Circuit Cases (Ireland), 3 vols, 1838-1846
Craw & D Abr C...	Crawford and Dix's Abridged Cases (Ireland), 1 vol, 1837-1838
Cress Insolv Cas...	Cresswell's Insolvency Cases, 1 vol, 1827-1829
Crim LR (preceded by date)...	Criminal Law Review, 1954-(current)
Cripps' Church Cas...	Cripps' Church and Clergy Cases, 2 parts, 1847-1850
Cro Car...	Croke's Reports <i>temp</i> Charles I, King's Bench and Common Pleas, 1 vol, 1625-1641 (ER vol 79)
Cro Eliz...	Croke's Reports <i>temp</i> Elizabeth, King's Bench and Common Pleas, 1 vol, 1582-1603 (ER vol 78)
Cro Jac...	Croke's Reports <i>temp</i> James I, King's Bench and Common Pleas, 1 vol, 1603-1625 (ER vol 79)
Cru Dig...	Cruise's Digest of the Law of Real Property, 7 vols
Cunn...	Cunningham's Reports, King's Bench, fol, 1 vol, 1734-1735 (ER vol 94)
Curt...	Curteis' Ecclesiastical Reports, 3 vols, 1834-1844 (ER vol 163)
D...	Duxbury's Reports of the High Court of the South African Republic, 1895
DCA...	Dorion's Queen's Bench Reports (Canada), 1880-1886
DCR (NSW)...	District Court Reports, New South Wales, 1968-1976
DLR...	Dominion Law Reports (Canada), 1912-1955
DLR (2d)...	Dominion Law Reports, Second Series (Canada), 1956-1968
DLR (3d)...	Dominion Law Reports, Third Series (Canada), 1969-1984
DLR (4th)...	Dominion Law Reports, Fourth Series (Canada), 1984-(current)
DTC...	Dominion Tax Cases, Canada, 1920-(current)
Dal...	Dalison's Reports, Common Pleas, fol, 1546-1574 (ER vol 123)
Dalr...	Dalrymple's Decisions, Court of Session (Scotland), fol, 1 vol, 1698-1720
Dan...	Daniell's Reports, Exchequer in Equity, 1 vol, 1817-1823 (ER vol 159)
Dan & Ll...	Danson and Lloyd's Mercantile Cases, 1 vol, 1828-1829
Dav & Mer...	Davison and Merivale's Reports, Queen's Bench, 1 vol, 1843-1844
Dav Ir...	Davys' (or Davis' or Davy's) Reports (Ireland), 1 vol, 1604-1612 (ER vol 80)
Dav Pat Cas...	Davies' Patent Cases, 1 vol, 1785-1816
Day...	Day's Election Cases, 1 vol, 1892-1893
Dea & Sw...	Deane and Swabey's Ecclesiastical Reports, 1 vol, 1855-1857 (ER vol 164)

Deac...	Deacon's Reports, Bankruptcy, 4 vols, 1834-1840
Deac & Ch...	Deacon and Chitty's Reports, Bankruptcy, 4 vols, 1832-1835
Dears & B...	Dearsly and Bell's Crown Cases Reserved, 1 vol, 1856-1858 (ER vol 169)
Dears CC...	Dearsly's Crown Cases Reserved, 1 vol, 1852-1856 (ER vol 169)
Deas & And...	Deas and Anderson's Decisions (Scotland), 5 vols, 1829-1832
Decisions and Reports...	Decisions and Reports of the European Commission on Human Rights
De G...	De Gex's Reports, Bankruptcy, 2 vols, 1844-1850
De G & J...	De Gex and Jones's Reports, Chancery, 4 vols, 1857-1859 (ER vols 44-45)
De G & Sm...	De Gex and Smale's Reports, Chancery, 5 vols, 1846-1852 (ER vols 63-64)
De GF & J...	De Gex, Fisher and Jones's Reports, Chancery, 4 vols, 1859-1862 (ER vol 45)
De GJ & Sm...	De Gex, Jones and Smith's Reports, Chancery, 4 vols, 1862-1865 (ER vol 46)
De GM & G...	De Gex, Macnaghten and Gordon's Reports, Chancery, 8 vols, 1851-1857 (ER vols 42-44)
Delane...	Delane's Decisions, Revision Courts, 1 vol, 1832-1835
Den...	Denison's Crown Cases Reserved, 2 vols, 1844-1852 (ER vol 169)
Dick...	Dickens' Reports, Chancery, 2 vols, 1559-1797 (ER vol 21)
Diprose & Gammon...	Reports of Cases affecting Friendly Societies, by Diprose and Gammon, 1 vol, 1897
Dirl...	Dirleton's Decisions, Court of Session (Scotland), fol, 1 vol, 1665-1677
Dods...	Dodson's Reports, Admiralty, 2 vols, 1811-1822 (ER vol 165)
Donnelly...	Donnelly's Reports, Chancery, 1 vol, 1836-1837 (ER vol 47)
Doug El Cas...	Douglas' Election Cases, 4 vols, 1774-1776
Doug KB...	Douglas' Reports, King's Bench, 4 vols, 1778-1785 (ER vol 99)
Dow...	Dow's Reports, House of Lords, 6 vols, 1812-1818 (ER vol 3)
Dow & Cl...	Dow and Clark's Reports, House of Lords, 2 vols, 1827-1832 (ER vol 6)
Dow & L...	Dowling and Lowndes' Practice Reports, 7 vols, 1843-1849
Dow & Ry KB...	Dowling and Ryland's Reports, King's Bench, 9 vols, 1822-1827
Dow & Ry MC...	Dowling and Ryland's Magistrates' Cases, 4 vols, 1822-1827
Dow & Ry NP...	Dowling and Ryland's Reports, Nisi Prius, 1 part, 1822-1823 (ER vol 171)
Dowl...	Dowling's Practice Reports, 9 vols, 1830-1841
Dowl NS...	Dowling's Practice Reports, New Series, 2 vols, 1841-1843
Dr & Wal...	Drury and Walsh's Reports, Chancery (Ireland), 2 vols, 1837-1841

Dr & War...	Drury and Warren's Reports, Chancery (Ireland), 4 vols, 1841-1843
Dra...	Draper's King's Bench Reports (Canada), 1 vol, 1828-1831
Drew...	Drewry's Reports, Chancery, 4 vols, 1852-1859 (ER vols 61-62)
Drew & Sm...	Drewry and Smale's Reports, Chancery, 2 vols, 1859-1865 (ER vol 62)
Drinkwater...	Drinkwater's Reports, Common Pleas, 1 vol, 1840-1841
Drury <i>temp</i> Nap...	Drury's Reports <i>temp</i> Napier, Chancery (Ireland), 1 vol, 1858-1859
Drury <i>temp</i> Sug...	Drury's Reports <i>temp</i> Sugden, Chancery (Ireland), 1 vol, 1843-1844
Dugd Orig...	Dugdale's Origines Juridicales, 1666
Duke...	Duke on Charitable Uses, 1805
Duke, ed Bridgman...	Duke on Charitable Uses, edited Bridgman
Dunl...	Dunlop, Court of Session Cases (Scotland), Second Series, 24 vols, 1838-1862
Dunning...	Dunning's Reports, King's Bench, 1 vol, 1753-1754
Durie...	Durie's Decisions, Court of Session (Scotland), fol, 1 vol, 1621-1642
Dyer...	Dyer's Reports, King's Bench, 3 vols, 1513-1581 (ER vol 73)
E & A...	Upper Canada Error and Appeal, 3 vols, 1846-1866
E & B...	Ellis and Blackburn's Reports, Queen's Bench, 8 vols, 1852-1858 (ER vols 118-120)
E & E...	Ellis and Ellis's Reports, Queen's Bench, 3 vols, 1858-1861 (ER vols 120-121)
E & L...	Education and the Law (eg (2001) 13(3) E & L)
EA...	East Africa Law Reports, 1957-(current)
EB & E...	Ellis, Blackburn, and Ellis's Reports, Queen's Bench, 1 vol, 1858-1860 (ER vol 120)
ECHR (preceded by date, followed by application number)...	Butterworths online European Court of Human Rights cases (eg [2005] ECHR 5637/98)
ECR (preceded by date)...	European Court Reports, 1954-(current)
ECLR...	European Competition Law Review, 1985-(current)
ECTHR Rules of Court...	Rules of Court of the European Court of Human Rights
EDC...	Reports of the Eastern Districts Court (Cape), 1880-1909
EDL...	Eastern Districts Local Division, South Africa, 1910-1946
EG...	Estates Gazette, 1858-(current) (eg [2001] 32 EG)
EG xx (CS)...	Estates Gazette Case Summaries, 1988-(current) (eg [2008] 1 EG 12 (CS))
EGLR...	Estates Gazette Law Reports, 1985-(current)
EHLR...	Environmental Health Law Reports
EHRLR (preceded by date)...	European Human Rights Law Review (eg [2001] EHRLR)
EHRR...	European Human Rights Reports, 1979-(current)
EIPR...	European Intellectual Property Review
ELJ (preceded by date)...	European Law Journal, 1995-(current) (eg (2001) 7ELJ)
ELM...	Environmental Law and Management, 1993-(current)
ELR...	Eastern Law Reporter (Canada), 14 vols, 1905-1914
ELR...	Education Law Reports

EL Rev (preceded by date)...	European Law Review, 1986-(current) (eg (2005) 30 EL Rev)
EMLR...	Entertainment and Media Law Reports, 1993-(current)
ENTLR...	Entertainment Law Review
EPOR...	European Patent Office Reports, 1979-(current)
ER (or Eng Rep)...	English Reports, 178 vols, 1220-1865
ER...	Ontario Election Reports, 2 vols, 1884-1900
ETLR...	Estates Times Law Reports, 1985-1986
ETMR...	European Trade Mark Reports
EWCA Civ...	Official neutral citation for judgments of the Court of Appeal (Civil Division)
EWCA Crim...	Official neutral citation for judgments of the Court of Appeal (Criminal Division)
EWHC...	Official neutral citation for judgments of the High Court
Eag & Y...	Eagle and Younge's Tithe Cases, 4 vols, 1204-1825
East...	East's Reports, King's Bench, 16 vols, 1800-1812 (ER vols 102-104)
East PC...	East's Pleas of the Crown, 2 vols, 1801-1814
Ecc & Ad...	Spink's Ecclesiastical and Admiralty Reports, 2 vols, 1853-1855
Ecc LJ...	Ecclesiastical Law Journal (eg (2004) 6 Ecc LJ)
Ed CR...	Education Case Reports
Ed Law...	Education Law Journal
Eden...	Eden's Reports, Chancery, 2 vols, 1757-1766 (ER vol 28)
Edgar...	Edgar's Decisions, Court of Session (Scotland), fol, 1724-1725
Edw...	Edwards' Reports, Admiralty, 1 vol, 1808-1812 (ER vol 165)
Elchies...	Elchies' Decisions, Court of Session (Scotland), 2 vols, 1733-1754
Emden's BC...	Emden's Building Contracts, Building Leases and Building Statutes
Emp Law & Lit...	Employment Law and Litigation (eg (2002) 6 Emp Law & Lit 3, p2)
Eng Pr Cas...	Roscoe's English Prize Cases, 2 vols, 1745-1858
Eng Rep (usually ER)...	English Reports, 178 vols, 1220-1865
Env LR...	Environmental Law Reports
Eq Cas Abr...	Abridgment of Cases in Equity, fol, 2 vols, 1667-1744 (ER vols 21- 22)
Eq Rep...	Equity Reports, 3 vols, 1853-1855
Esp...	Espinasses's Reports, Nisi Prius, 6 vols, 1793-1807 (ER vol 170)
Ex CR...	Exchequer Court Reports (Canada), 1923-1970
Ex D...	Law Reports, Exchequer Division, 5 vols, 1875-1880
Exch...	Exchequer Reports (Welsby, Hurlstone, and Gordon), 11 vols, 1847-1856 (ER vols 154-156)
Exch CR...	Exchequer Court Reports (Canada), 1881-1970
F...	Food's Reports of the Supreme Court of the Cape of Good Hope, 1879-1880
F...	Federal Reporter (USA), 1880-1924
F 2d...	Federal Reporter, Second Series (USA), 1924-(current)
F...	Fraser, Court of Session Cases (Scotland), 5th series, 8 vols, 1898-1906
F & F...	Foster and Finlason's Reports, Nisi Prius, 4 vols, 1856-

	1867 (ER vols 175-176)
FC...	Canada Federal Court Reports, 1971-(current)
FCR...	Family Court Reporter, 1987-1999, Family Court Reports, 2000-(current)
FLJ (Can)...	Canada Fortnightly Law Journal, 17 vols, 1931-1948
FLR...	Family Law Reports, 1980-(current)
FLR...	Federal Law Reports (Australia), 1957-(current)
FND...	Finnemore's Notes and Digest of Natal Cases, 1863-1867
FR...	Federal Court Reports (Canada), 1971-(current)
FSR...	Fleet Street Reports, 1963-(current)
FTLR...	Financial Times Law Reports, 1982-(current)
F Supp...	Federal Supplement (USA), 1932-(current)
Fac Coll...	Faculty of Advocates, Collection of Decisions, Court of Session (Scotland), 38 vols, 1752-1841
Falc...	Falconer's Decisions, Court of Session (Scotland), 2 vols, fol, 1744-1751
Falc & Fitz...	Falconer and Fitzherbert's Election Cases, 1 vol, 1835-1838
Fam (preceded by date)...	Law Reports, Family Division, 1972-(current) (eg [1972] Fam)
Fam Law...	Family Law, 1971-(current)
Fam Law R...	Family Law Reports, 1980-(current)
Fenton...	Fenton, Important Judgments (New Zealand), 1866-1879
Ferg...	Ferguson's Consistorial Decisions (Scotland), 1 vol, 1811-1817
Findings and Orders...	Decisions of Disciplinary Committee appointed under Solicitors Act 1974
Fitz Nat Brev...	Fitzherbert's Natura Brevium
Fitz-G...	Fitz-Gibbons' Reports, King's Bench, fol, 1 vol, 1727-1732 (ER vol 94)
Fl & K...	Flanagan and Kelly's Reports, Rolls Court (Ireland), 1 vol, 1840-1842
Fonbl...	Fonblanque's Reports, Bankruptcy, 2 parts, 1849-1852
For...	Forrest's Reports, Exchequer, 1 vol, 1800-1801 (ER vol 145)
Forb...	Forbes' Decisions, Court of Session (Scotland), fol, 1 vol, 1705-1713
Fort De Laud...	Fortesque, De Laudibus Legum Angliæ
Fortes Rep...	Fortescue's Reports, fol, 1 vol, 1695-1738 (ER vol 92)
Fost...	Foster's Crown Cases, 1 vol, 1708-1760 (ER vol 168)
Fount...	Fountainhall's Decisions, Court of Session (Scotland), fol, 2 vols, 1678-1712
Fox & S Ir...	M C Fox and T B C Smith's Reports, King's Bench (Ireland), 2 vols, 1822-1825
Fox & S Reg...	J S Fox and C L Smith's Registration Cases, 1 vol, 1886-1895
Fox Pat C...	Fox's Patent Cases (Canada), 1940-(current)
Fras...	Simon Fraser, Election Cases, 2 vols, 1793
Freem Ch...	Freeman's Reports, Chancery, 1 vol, 1660-1706 (ER vol 22)
Freem KB...	Freeman's Reports, King's Bench and Common Pleas, 1 vol, 1670-1704 (ER vol 89)
G...	Gregorowski's Reports of the High Court of the Orange Free State, 1883-1887

G & R...	Nova Scotia Reports (Geldert & Russell), 32 vols, 1895-1929
GI Dig...	General Index Digest (Canada)
GLR...	Gazette Law Reports (New Zealand), 1898-1953
GWD...	Green's Weekly Digest
GWL...	Griqualand West Local Division, South Africa, 1910-1946
Gal & Dav...	Gale and Davison's Reports, Queen's Bench, 3 vols, 1841-1843
Gale...	Gale's Reports, Exchequer, 2 vols, 1835-1836
Gaz LR...	Gazette Law Reports (New Zealand), 1898-1953
Geld Dig...	Geldert's Digest (Canada), 1888-1907
Gib Cod...	Gibson's Codex Juris Ecclesiastici Anglicani
Giff...	Giffard's Reports, Chancery, 5 vols, 1857-1865 (ER vol 65-66)
Gilb...	Gilbert's Cases in Law and Equity, 1 vol, 1713-1714 (ER vol 93)
Gilb CP...	Gilbert's History and Practice of the Court of Common Pleas
Gilb Ch...	Gilbert's Reports, Chancery and Exchequer, fol, 1 vol, 1706-1726 (ER vol 25)
Gilm & F...	Gilmour and Falconer's Decisions, Court of Session (Scotland), 2 parts, Part I (Gilmour) 1661-1666, Part II (Falconer) 1681-1686
GL & J...	Glyn and Jameson's Reports, Bankruptcy, 2 vols, 1819-1828
Glanv...	Glanville, De Legibus et Consuetudinibus Regni Angliæ
Glanv El Cas...	Glanville's Election Cases, 1 vol, 1623-1624
Glascoc...	Glascoc's Reports (Ireland), 1 vol, 1831-1832
Godb...	Godbolt's Reports, King's Bench, Common Pleas, and Exchequer, 1 vol, 1574-1637 (ER vol 78)
Gouldsb...	Gouldsborough's Reports, Queen's Bench and King's Bench, 1 vol, 1586-1601 (ER vol 75)
Gow...	Gow's Reports, Nisi Prius, 1 vol, 1818-1820 (ER vol 171)
Gr...	Upper Canada Chancery (Grant), 29 vols, 1844-1882
Griffin's Patent Cases...	Griffin's Patent Cases, 1 vol, 1884-1887
Gwill...	Gwillim's Tithe Cases, 4 vols, 1224-1824
H...	Hertzog's Reports of the High Court of the South African Republic, 1893
H & C...	Hurlstone and Coltman's Reports, Exchequer, 4 vols, 1862-1866 (ER vols 158-159)
H & N...	Hurlstone and Norman's Reports, Exchequer, 7 vols, 1856-1862 (ER vols 156-158)
H & Tw...	Hall and Twell's Reports, Chancery, 2 vols, 1849-1850 (ER vol 47)
H & W...	Hurlstone and Walmsley's Reports, Exchequer, 1 vol, 1840-1841
HBR (preceded by date)...	Hansell's Reports of Bankruptcy and Companies Winding up Cases, 3 vols, 1915-1917 (eg [1915] HBR)
HC...	House of Commons Paper
HC...	Reports of the High Court of Griqualand West (South Africa), 1882-1910
HEC...	Hodgin's Election Reports (Canada), 1 vol, 1871-1879
HKC (preceded by date)...	Hong Kong Cases

HKLR (preceded by date)...	Hong Kong Law Reports, 1905-(current)
HL Cas...	Clark's Reports, House of Lords, 11 vols, 1847-1866 (ER vols 9-11)
HLR...	Housing Law Reports, 1967-(current)
Hag Adm...	Haggard's Reports, Admiralty, 3 vols, 1822-1838 (ER vol 166)
Hag Con...	Haggard's Consistorial Reports, 2 vols, 1789-1821 (ER vol 161)
Hag Ecc...	Haggard's Ecclesiastical Reports, 4 vols, 1827-1833 (ER vol 162)
Hailes...	Hailes's Decisions, Court of Session (Scotland), 2 vols, 1766-1791
Hale CL...	Hale's Common Law
Hale PC...	Hale's Pleas of the Crown, 2 vols, 1678
Han...	New Brunswick Reports (Hannay), 2 vols, 1867-1871
Har & Ruth...	Harrison and Rutherford's Reports, Common Pleas, 1 vol, 1865-1866
Har & W...	Harrison and Wollaston's Reports, King's Bench and Bail Court, 2 vols, 1835-1836
Harc...	Harcarse's Decisions, Court of Session (Scotland), fol, 1 vol, 1681-1691
Hard...	Hardres' Reports, Exchequer, fol, 1 vol, 1655-1669 (ER vol 145)
Hare...	Hare's Reports, Chancery, 11 vols, 1841-1853 (ER vols 66-68)
Hawk PC...	Hawkin's Pleas of the Crown, 2 vols
Hay...	Hay's Reports (India), 1862-1863
Hay & Marr...	Hay and Marriott's Decisions, Admiralty, 1 vol, 1776-1779 (ER vol 165)
Hayes...	Hayes's Reports, Exchequer (Ireland), 1 vol, 1830-1832
Hayes & Jo...	Hayes and Jones's Reports, Exchequer (Ireland), 1 vol, 1832-1834
Hem & M...	Hemming and Miller's Reports, Chancery, 2 vols, 1862-1865 (ER vol 71)
Het...	Hetley's Reports, Common Pleas, fol, 1 vol, 1627-1631 (ER vol 124)
Hob...	Hobart's Reports, Common Pleas, fol, 1 vol, 1603-1625 (ER vol 80)
Hodg...	Hodges' Reports, Common Pleas, 3 vols, 1835-1837
Hog...	Hogan's Reports, Rolls Court (Ireland), 2 vols, 1816-1834
Holt Adm...	W Holt's Rule of the Road Cases, Admiralty, 1 vol, 1863-1867
Holt Eq...	W Holt's Equity Reports, 2 vols, 1845 (ER vol 71)
Holt KB...	Sir John Holt's Reports, King's Bench, fol, 1 vol, 1688-1710 (ER vol 90)
Holt NP...	F Holt's Reports, Nisi Prius, 1 vol, 1815-1817 (ER vol 171)
Home...	Home's Decisions, Court of Session (Scotland), fol, 1 vol, 1735-1744
Hong Kong LR (or HKLR)...	Hong Kong Law Reports, 1905-(current)
Hop & Colt...	Hopwood and Coltman's Registration Cases, 2 vols, 1868-1878
Hop & Ph...	Hopwood and Philbrick's Registration Cases, 1 vol, 1863-1867

Horn & H...	Horn and Hurlstone's Reports, Exchequer, 2 vols, 1838-1839
Hov Supp...	Hovenden's Supplement to Vesey Jun's Reports, Chancery, 2 vols, 1753-1817 (ER vol 34)
How C...	Howard's Chancery Practice (Ireland), 1 vol, 1772
How CS...	Howard's Supplement to Rules, etc, of the High Court of Chancery in Ireland, 1774
How EE...	Howard's Equity Exchequer (Ireland)
How PL...	Howard on the Popery Laws (Ireland), 1 vol, 1720-1723
Hud & B...	Hudson and Brooke's Reports, King's Bench and Exchequer (Ireland), 2 vols, 1827-1831
Hudson's BC...	Hudson's Building and Engineering Contracts
Hume...	Hume's Decisions, Court of Session (Scotland), 1 vol, 1781-1822
Hut...	Hutton's Reports, Common Pleas, fol, 1 vol, 1612-1638 (ER vol 123)
Hy Bl...	Henry Blackstone's Reports, Common Pleas, 2 vols, 1788-1796 (ER vol 126)
Hyde...	Hyde's Reports (India), 1862-1864
IANL (preceded by date)...	Tolley's Journal of Immigration, Asylum and Nationality Law (eg (2001) 15 IANL)
ICCR/ICCLR...	International Company and Commercial Law Review
ICJ Reports...	International Court of Justice Reports
ICLQ...	International and Comparative Law Quarterly
ICLR...	Irish Common Law Reports, 17 vols, 1849-1866
ICR (preceded by date)...	Industrial Cases Reports, 1975-(current)
ICR (preceded by date)...	Industrial Court Reports, 1972-1974
I Ch R...	Irish Chancery Reports, 17 vols, 1850-1866
I Eq R...	Irish Equity Reports, 13 vols, 1838-1850
ILJ...	Industrial Law Journal
ILM...	International Legal Materials
ILPr...	International Litigation Procedure
ILR...	Insurance Law Reporter (Canada), 1934-(current)
ILR...	Irish Law Reports, 13 vols, 1838-1850
ILR (vol no) All...	Indian Law Reports, Allahabad
ILR (vol no) Bom...	Indian Law Reports, Bombay
ILR (vol no) Calc...	Indian Law Reports, Calcutta
ILR (vol no) Lah...	Indian Law Reports, Lahore
ILR (vol no) Mad...	Indian Law Reports, Madras
ILR (vol no) Pat...	Indian Law Reports, Patna
ILT (vol no) Ran...	Indian Law Reports, Rangoon
ILT...	Irish Law Times, 1867-(current)
ILT Jo...	Irish Law Times Journal, 1867-(current)
INLP/I & NL & P...	Immigration and Nationality Law and Practice
IP & IT Law...	Intellectual Property and Information Technology Law, 1998-(current)
IP & T...	Intellectual Property and Technology
IPQ (preceded by date)...	Intellectual Property Quarterly, 1997-(current) (eg [2001] IPQ)
IR (preceded by date)...	Irish Reports, 1893-(current) (eg [1894] 1 IR)
IR (vol no) CL...	Irish Reports, Common Law, 11 vols, 1866-1877
IR (vol no) Eq...	Irish Reports, Equity, 11 vols, 1866-1877
IRLR...	Industrial Relations Law Reports
IR R & L...	Irish Reports, Registry Appeals in the Court of Exchequer

	Chamber and Appeals in the Court for Land Cases Reserved, 1 vol, 1868-1876
ITCLR...	IT and Communications Law Reports
ITELR...	International Trust and Estate Law Reports
ITLR...	International Tax Law Reports
ITR...	Industrial Tribunal Reports. Published by HMSO, 1966-(current)
Ill...	Illinois Reports, 1819-1878
Imm AR (preceded by date)...	Immigration Appeal Reports, 1972-(current)
Ind Awards...	Industrial Awards Recommendations (New Zealand), 1894- (current)
Ind Jur NS...	Indian Jurist, New Series, 1866-1867 (Calcutta), 1884-1893 (Madras)
Ind Jur OS...	Indian Jurist, Old Series, 1862-1863 (Calcutta), 1877-1883 (Madras)
Int J Const Law...	International Journal of Constitutional Law
Ir Cir Rep...	Reports of Irish Circuit Cases, 1 vol, 1841-1843
Ir Jur...	Irish Jurist, 18 vols, 1849-1866
Ir L Rec 1st ser...	Law Recorder (Ireland), 1st series, 5 vols, 1827-1833
Ir L Rec NS...	Law Recorder (Ireland), New Series, 6 vols, 1833-1838
Irv...	Irvine's Justiciary Reports (Scotland), 5 vols, 1852-1867
JBL...	Journal of Business Law
J Bridg...	Sir John Bridgman's Reports, Common Pleas, fol, 1 vol, 1613-1621 (ER vol 123)
JC...	Justiciary Cases (Scotland), 1917-(current)
JDR...	Juta's Daily Reporter, reporting Cases in the Cape Provincial Division, 1915-1926
JHL (preceded by date)...	Journal of Housing Law, 1997-(current) (eg [2001] JHL)
JIBFL...	Journal of International Banking and Finance Law
JICJ...	Journal of International Criminal Justice (eg (2007) 5(1) JICJ)
JP...	Justice of the Peace, 1837-(current)
JP Jo...	Criminal Law and Justice Weekly 2009-(current) (formerly Justice of the Peace, 1837-2009)
JPL (preceded by date)...	Journal of Planning Law, 1948-1953; subsequently Journal of Planning and Property Law, 1954-1972; subsequently Journal of Planning and Environment Law, 1973-(current)
JPIL (preceded by date)...	Journal of Personal Injury Law, 2000-(current) (eg [2001] JPIL)
JR...	Jurist Reports, 18 vols, 1837-1854
JRNS...	Jurist Reports, New Series, 12 vols, 1855-1867
JSSL (preceded by date)...	Journal of Social Security Law, 1994-(current) (eg (2001) 5 JSSL)
JSWFL...	Journal of Social Welfare and Family Law
J Shaw, Just...	J Shaw's Justiciary Reports (Scotland), 1 vol, 1848-1852
Jac...	Jacob's Reports, Chancery, 1 vol, 1821-1823 (ER vol 37)
Jac & W...	Jacob and Walker's Reports, Chancery, 2 vols, 1819-1821 (ER vol 37)
James...	Nova Scotia Reports (James), 1 vol, 1853-1855 (2 NSR)
Jebb & B...	Jebb and Bourke's Reports, Queen's Bench (Ireland), 1 vol, 1841-1842
Jebb & S...	Jebb and Symes' Reports, Queen's Bench (Ireland), 2 vols, 1838-1841

Jebb CC...	Jebb's Crown Cases Reserved (Ireland), 1 vol, 1822-1840
Jebb Cr & Pr Cas...	Jebb's Crown and Presentment Cases (Ireland), 1 vol, 1822-1840
Jenk...	Jenkin's Reports, 1 vol, 1220-1623 (ER vol 145)
JoCL...	Journal of Criminal Law (eg (2010) JoCL 74 (1))
Jo & Car...	Jones and Carey's Reports, Exchequer (Ireland), 1 vol, 1838-1839
Jo & Lat...	Jones and La Touche's Reports, Chancery (Ireland), 3 vols, 1844-1846
Jo Ex Ir...	T Jones' Reports, Exchequer (Ireland), 2 vols, 1834-1838
John...	Johnson's Reports, Chancery, 1 vol, 1858-1860 (ER vol 70)
John & H...	Johnson and Hemming's Reports, Chancery, 2 vols, 1859-1862 (ER vol 70)
Jur...	Jurist Reports, 18 vols, 1837-1854
Jur NS...	Jurist Reports, New Series, 12 vols, 1855-1867
Just Inst...	Justinian's Institutes
K...	Kotze's Reports on the High Court of the Transvaal Province, 1877-1881
K & G...	Keane and Grant's Registration Cases, 1 vol, 1854-1862
K & J...	Kay and Johnson's Reports, Chancery, 4 vols, 1853-1858 (ER vols 69-70)
KB (preceded by date)...	Law Reports, King's Bench Division, 53 vols, 1901-1952 (eg [1901] 2 KB)
KIR...	Knight's Industrial Reports, 1966-1975
Kames Dict Dec...	Kames, Dictionary of Decisions, Court of Session (Scotland), fol, 2 vols, 1540-1741
Kames Rem Dec...	Kames, Remarkable Decisions, Court of Session (Scotland), 2 vols, 1716 & 1752
Kames Sel Dec...	Kames, Select Decisions, Court of Session (Scotland), 1 vol, 1752-1768
Kay...	Kay's Reports, Chancery, 1 vol, 1853-1854 (ER vol 69)
Keb...	Keble's Reports, fol, 3 vols, 1661-1677 (ER vols 83-84)
Keen...	Keen's Reports, Rolls Court, 2 vols, 1836-1838 (ER vol 48)
Keil...	Keilway's Reports, King's Bench, fol, 1 vol, 1327-1578 (ER vol 72)
Kel...	Sir John Kelyng's Reports, Crown Cases, fol, 1 vol, 1662-1707 (ER vol 84)
Kel W...	W Kelynge's Reports, fol, 1 vol, Chancery, 1730-1732; King's Bench, fol, 1731-1734 (ER vol 25)
Kenyon...	Kenyon's Notes of Cases, King's Bench, 2 vols, 1753-1759 (ER vol 96)
Kenyon Ch...	Chancery Cases in Vol II of Kenyon's Notes of Cases, 1753-1754
Kerr...	New Brunswick Reports (Kerr), 3 vols, 1840-1848 (3-5 NBR)
Kilkerran...	Kilkerran's Decisions, Court of Session (Scotland), fol, 1 vol, 1738-1752
Kn & Omb...	Knapp and Omblor's Election Cases, 1 vol, 1834-1835
Knapp...	Knapp's Reports, Privy Council, 3 vols, 1829-1836 (ER vol 12)
Knox...	Knox's Reports (New South Wales), 1 vol, 1877
Konst & W Rat App...	Konstam and Ward's Reports of Rating Appeals, 1 vol, 1909-1912

Konst Rat App...	Konstam's Reports of Rating Appeals, 2 vols, 1904-1908
L & G <i>temp</i> Plunk...	Lloyd and Goold's Reports <i>temp</i> Plunkett, Chancery (Ireland), 1 vol, 1834-1836
L & G <i>temp</i> Sugd...	Lloyd and Goold's Reports <i>temp</i> Sugden, Chancery (Ireland), 1 vol, 1835
L & TR...	Landlord and Tenant Reports
L & Welsb...	Lloyd and Welsby's Commercial and Mercantile Cases, 1 vol, 1829-1830
LA...	Legal Action
LCC (NSW)...	Land Appeal Court Cases, New South Wales, 31 vols, 1890-1921
LC & M Gaz...	Local Courts and Municipal Gazette (Canada), 1865-1872
LCJ...	Lower Canada Jurist, 35 vols, 1848-1891
LCLJ...	Lower Canada Law Journal, 4 vols, 1865-1868
LCR...	Lower Canada Reports, 17 vols, 1850-1867
L Ed...	Lawyer's Edition, United States Supreme Court Reports, 1754-1956
L Ed 2d...	Lawyer's Edition, United States Supreme Court Reports, Second Series, 1956-(current)
L (EPT)...	Excess Profits Tax Leaflets, published by HMSO
LGL...	Local Government Law
LGR...	Local Government Reports, 1902-(current)
LG Rev...	Local Government Review
LGR...	New South Wales Local Government Reports, 20 vols, 1911-1955
LGRA...	Local Government Reports of Australia, 1956-(current)
LJAdm...	Law Journal, Admiralty, 1865-1875
LJBcy...	Law Journal, Bankruptcy, 1832-1880
LJCCR...	Law Journal (County Courts Reporter), 1934-1947
LJCP...	Law Journal, Common Pleas, 1831-1875
LJCh...	Law Journal, Chancery, 1831-1946
LJEcl...	Law Journal, Ecclesiastical Cases, 1866-1875
LJEx...	Law Journal, Exchequer, 1831-1875
LJEx Eq...	Law Journal, Exchequer in Equity, 1835-1841
LJKB <i>or</i> QB...	Law Journal, King's Bench or Queen's Bench, 1831-1946
LJMC...	Law Journal, Magistrates' Cases, 1831-1896
LJNC...	Law Journal, Notes of Cases, 1866-1892 (from 1893, see Law Journal)
LJOS...	Law Journal, Old Series, 10 vols, 1822-1831
LJP...	Law Journal, Probate, Divorce and Admiralty, 1875-1946
LJP & M...	Law Journal, Probate and Matrimonial Cases, 1858-1859, 1866-1875
LJPC...	Law Journal, Privy Council, 1865-1946
LJPM & A...	Law Journal, Probate, Matrimonial and Admiralty, 1860-1865
LJR (preceded by date)...	Law Journal Reports, 1947-1949 (eg [1947] LJR)
L Jo...	Law Journal Newspaper, 1866-1965
LLR...	Licensing Law Reports
LM & P...	Lowndes, Maxwell, and Pollock's Reports, Bail Court and Practice, 2 vols, 1850-1851
LMCLQ...	Lloyd's Maritime and Commercial Law Quarterly
LMELR...	Land Management and Environmental Law Reports
LN...	Legal News (Canada), 20 vols, 1878-1897
LQR...	Law Quarterly Review, 1885-(current)

LR (vol no) A & E...	Law Reports, Admiralty and Ecclesiastical Cases, 4 vols, 1865-1875
LR (vol no) CCR...	Law Reports, Crown Cases Reserved, 2 vols, 1865-1875
LR (vol no) CP...	Law Reports, Common Pleas, 10 vols, 1865-1875
LR (vol no) Eq...	Law Reports, Equity Cases, 20 vols, 1865-1875
LR (vol no) Exch...	Law Reports, Exchequer, 10 vols 1865-1875
LR (vol no) HL...	Law Reports, English and Irish Appeals and Peerage Claims, House of Lords, 7 vols, 1866-1875
LR (vol no) Ind App...	Law Reports, Indian Appeals, Privy Council, 77 vols, 1873-1950
LR Ind App Supp Vol...	Law Reports, India Appeals Privy Council, Supplementary Volume, 1872-1873
LR (vol no) Ir...	Law Reports (Ireland), Chancery and Common Law, 32 vols, 1877-1893
LR (NSW)...	New South Wales Law Reports, 21 vols, 1880-1900
LR (vol no) P & D...	Law Reports, Probate and Divorce, 3 vols, 1865-1875
LR (vol no) PC...	Law Reports, Privy Council, 6 vols, 1865-1875
LR (vol no) QB...	Law Reports, Queen's Bench, 10 vols, 1865-1875
LR (vol no) RP...	Law Reports, Restrictive Practices, 1957-1972
LR (vol no) Sc & Div...	Law Reports, Scotch and Divorce Appeals, House of Lords, 2 vols, 1866-1875
LRC...	Law Reports of the Commonwealth 1985-(current)
LRLR...	Lloyd's Reinsurance Law Reports
LS...	Legal Studies
LS Gaz...	The Law Society's Gazette
LS Gaz R...	The Law Society's Gazette Reports, 1973-(current)
LT...	Law Times Reports, 177 vols, 1859-1947
L (TC)...	Income Tax Leaflets, published by HMSO, 1938-(current)
LT Jo...	Law Times Newspaper, 1843-1965
LTOS...	Law Times Reports, Old Series, 34 vols, 1843-1859
LTR...	Law Times Reports
L & T Rev (preceded by date)...	Landlord and Tenant Review, 1996-(current) (eg (2001) 5 L & T Rev)
L Th...	La Themis (Canada), 5 vols, 1879-1883
LVR...	Land and Valuation Court Reports (New South Wales), 1922-1970
Lane...	Lane's Reports, Exchequer, fol, 1 vol, 1605-1611 (ER vol 145)
Lat...	Latch's Reports, King's Bench, fol, 1 vol, 1625-1628 (ER vol 82)
Law Inst J...	Law Institute Journal (Victoria), 1927-(current)
Law Soc J...	Law Society Journal (New South Wales), 1963-(current)
Laws Reg Cas...	Lawson's Registration Cases (Ireland), 4 vols, 1885-1914
Ld Raym...	Lord Raymond's Reports, King's Bench and Common Pleas, 3 vols, 1694-1732 (ER vols 91-92)
Le & Ca...	Leigh and Cave's Crown Cases Reserved, 1 vol, 1861-1865 (ER vol 169)
Leach...	Leach's Crown Cases, 2 vols, 1730-1814 (ER vol 168)
Lee...	Sir G Lee's Ecclesiastical Judgments, 2 vols, 1752-1758 (ER vol 161)
Lee <i>temp</i> Hard...	T Lee's Cases <i>temp</i> Hardwicke, King's Bench, 1 vol, 1733-1738
Leg Rep...	Legal Reporter (Ireland), 3 vols, 1840-1843
Legge...	Legge Supreme Court Cases (New South Wales), 2 vols, 1825-1862

Leon...	Leonard's Reports, King's Bench, Common Pleas and Exchequer, fol, 4 parts, 1552-1615 (ER vol 74)
Lev...	Levinz's Reports, King's Bench and Common Pleas, fol, 3 vols, 1660-1696 (ER vol 83)
Lew CC...	Lewin's Crown Cases on the Northern Circuit, 2 vols, 1822-1838 (ER vol 168)
Ley...	Ley's Reports, King's Bench, fol, 1 vol, 1608-1629 (ER vol 80)
Lib Ass...	Liber Assisarum, Year Books, 1-50 Edw III
Lilly...	Reports and Pleadings of Cases in Assize, fol, 1 vol, 1688-1693 (ER vol 170)
Litt...	Littleton's Reports, Common Pleas, fol, 1 vol, 1627-1631 (ER vol 124)
LI L Rep...	Lloyd's List Law Reports, 1919-1950
Lloyd's Rep (preceded by date)...	Lloyd's List Law Reports, 1951-(current) (eg [1952] 1 Lloyd's Rep)
Lloyd's Rep Bank...	Lloyd's Law Reports Banking
Lloyd's Rep IR...	Lloyd's Law Reports Insurance and Reinsurance
Lloyd's Rep Med...	Lloyd's Law Reports Medical
Lloyd Pr Cas...	Lloyd's Reports of Prize Cases, 10 vols, 1914-1924
Lloyd Pr Cas NS...	Lloyd's Reports of Prize Cases, New Series, 1940-1953
Lofft...	Lofft's Reports, King's Bench, fol, 1 vol, 1772-1774 (ER vol 98)
Long & T...	Longfield and Townsend's Reports, Exchequer (Ireland), 1 vol, 1841-1842
Lords Journals...	Journals of the House of Lords
Lud EC...	Luder's Election Cases, 3 vols, 1784-1787
Lumley PLC...	Lumley's Poor Law Cases, 2 vols, 1834-1842
Lush...	Lushington's Reports, Admiralty, 1 vol, 1859-1862 (ER vol 167)
Lut...	Sir E Lutwyche's Entries and Reports, Common Pleas, 2 vols, 1682-1704 (ER vol 125)
Lut Reg Cas...	A J Lutwyche's Registration Cases, 2 vols, 1843-1853
Lynd...	Lyndwood, Provinciale, fol, 1 vol
M...	Menzie's Reports of the Supreme Court of the Cape of Good Hope, 1828-1850
M & S...	Maule and Selwyn's Reports, King's Bench, 6 vols, 1813-1817 (ER vol 105)
M & W...	Meeson and Welsby's Reports, Exchequer, 16 vols, 1836-1847 (ER vols 150-153)
MAR...	Municipal Association Reports (Australia), 1886-1911
MCC...	Mining Commissioners' Cases (Canada), 1 vol, 1906-1910
MCR...	Montreal Condensed Reports, 1 vol, 1853-1854
MHCR...	Madras High Court Reports, 1862-1875
MLJ...	Malayan Law Journal
MLR...	Modern Law Review
MLR (vol no) QB...	Montreal Law Reports, Queen's Bench, 7 vols, 1885-1891
MLR (vol no) SC...	Montreal Law Reports, Superior Court, 7 vols, 1885-1891
MLRep...	Manx Law Reports
MM Cas...	Martin's Reports of Mining Cases (Canada), 3 vols, 1853-1903
MPR...	Maritime Provinces Reports (Canada), 53 vols, 1930-1967
Mac...	Macassey Reports (New Zealand), 1861-1872
Mac & G...	Macnaghten and Gordon's Reports, Chancery, 3 vols,

	1849-1852 (ER vols 41-42)
Mac & H...	Macrae and Hertslet's Insolvency Cases, 1 vol, 1847-1852
M'Cle...	M'Clelland's Reports, Exchequer, 1 vol, 1824 (ER vol 148)
M'Cle & Yo...	M'Clelland and Younge's Reports, Exchequer, 1 vol, 1824-1825 (ER vol 148)
Macfarlane...	Macfarlane's Jury Trials, Court of Session (Scotland), 3 parts, 1838-1839
MacG Cop Cas...	MacGillivray's Copyright Cases, 9 vols, 1901-1949
MacI & Rob...	Maclean and Robinson's Scotch Appeals (House of Lords), 1 vol, 1839 (ER vol 9)
Macph...	Macpherson, Court of Session (Scotland), 3rd series, 11 vols, 1862-1873
Macq...	Macqueen's Scotch Appeals, House of Lords, 4 vols, 1849-1865
Macr...	Macrory's Patent Cases, 2 parts, 1847-1856
Mad...	Madras High Court Reports, 1862-1875
Madd...	Maddock's Reports, Chancery, 6 vols, 1815-1822 (ER vol 56)
Madd & G...	Maddock and Geldart's Reports, Chancery, 1 vol, 1819-1822 (Vol VI of Madd)
Madox...	Madox's Formulæ Anglicanum, 1 vol, 1702
Madox Exch...	Madox's History and Antiquities of the Exchequer, 2 vols, 1769
Mag...	Magistrate and Municipal and Parochial Lawyer, London, 5 vols, 1848-1852
Man & G...	Manning and Granger's Reports, Common Pleas, 7 vols, 1840-1845 (ER vols 133-135)
Man & Ry KB...	Manning and Ryland's Reports, King's Bench, 5 vols, 1827-1830
Man & Ry MC...	Manning and Ryland's Magistrates' Cases, 3 vols, 1827-1830
Man LJ...	Manitoba Law Journal, 2 vols, 1884-1885
Man LR <i>or</i> Man R...	Manitoba Law Reports, 1883-(current)
Man R <i>temp</i> Wood...	Manitoba Reports <i>temp</i> Wood, 1 vol, 1875-1883
Mans...	Manson's Bankruptcy and Company Cases, 21 vols, 1893-1914
Mar LC...	Maritime Law Reports (Crockford), 3 vols, 1860-1871
March...	March's Reports, King's Bench and Common Pleas, 1 vol, 1639-1642 (ER vol 82)
Marr...	Hay and Marriott's Decisions, Admiralty, 1 vol, 1776-1779 (ER vol 165)
Marsh...	Marshall's Reports, Common Pleas, 2 vols, 1813-1816
Marsh...	Marshall & Sevestre's Appeals, 1862, 1864 (India)
Mayn...	Maynard's Reports, Exchequer Memoranda of Edw I and Year Books of Edw II, Year Books, Part I, 1273-1326
Med LR...	Medical Law Reports
Meg...	Megone's Companies Acts Cases, 2 vols, 1889-1891
Melb Univ L Rev...	Melbourne University Law Review, 1957-(current)
Men...	Menzie's Reports of the Supreme Court of the Cape of Good Hope, 1828-1850
Mer...	Merivale's Reports, Chancery, 3 vols, 1815-1817 (ER vols 35-36)
Milw...	Milward's Ecclesiastical Reports (Ireland), 1 vol, 1819-1943
Misc...	New York Miscellaneous, 1892-1955

Misc 2d...	New York Miscellaneous, Second Series, 1955-(current)
Mod LR...	Modern Law Review, 1937-(current)
Mod Rep...	Modern Reports, 12 vols, 1669-1755 (ER vols 86-88)
Mol...	Molloy's Reports, Chancery (Ireland), 3 vols, 1808-1831
Mont...	Montagu's Reports, Bankruptcy, 1 vol, 1829-1832
Mont & A...	Montagu and Ayrton's Reports, Bankruptcy, 3 vols, 1832-1838
Mont & B...	Montagu and Bligh's Reports, Bankruptcy, 1 vol, 1832-1833
Mont & Ch...	Montagu and Chitty's Reports, Bankruptcy, 1 vol, 1838-1840
Mont & M...	Montagu and Macarthur's Reports, Bankruptcy, 1 vol, 1826-1830
Mont D & De G...	Montagu, Deacon and De Gex's Reports, Bankruptcy, 3 vols, 1840-1844
Monthly Review...	The Journal of the Incorporated Society of Inspectors of Weights and Measures
Moo & P...	Moore and Payne's Reports, Common Pleas, 5 vols, 1827-1831
Moo & S...	Moore and Scott's Reports, Common Pleas, 4 vols, 1831-1834
Moo Ind App...	Moore's Indian Appeal Cases, Privy Council, 14 vols, 1836-1872 (ER vols 18-20)
Moo PCC...	Moore's Privy Council Cases, 15 vols, 1836-1862 (ER vols 12-15)
Moo PCCNS...	Moore's Privy Council Cases, New Series, 9 vols, 1862-1873 (ER vols 15-17)
Mood & M...	Moody and Malkin's Reports, Nisi Prius, 1 vol, 1826-1830 (ER vol 173)
Mood & R...	Moody and Robinson's Reports, Nisi Prius, 2 vols, 1830-1844 (ER vol 174)
Mood CC...	Moody's Crown Cases Reserved, 2 vols, 1824-1844 (ER vols 168-169)
Moore CP...	J B Moore's Reports, Common Pleas, 12 vols, 1817-1827
Moore KB...	Sir F Moore's Reports, King's Bench, fol, 1 vol, 1485-1620 (ER vol 72)
Mor Dict...	Morison's Dictionary of Decisions, Court of Session (Scotland), 43 vols, 1532-1808
Morr...	Morrell's Reports, Bankruptcy, 10 vols, 1884-1893
Mos...	Moseley's Reports, Chancery, fol, 1 vol, 1726-1730 (ER vol 25)
Mun Rep...	Municipal Reports (Canada), 1 vol, 1845-1851
Murd Epit...	Murdoch's Epitome (Canada)
Murp & H...	Murphy and Hurlstone's Reports, Exchequer, 1 vol, 1837
Murr...	Murray's Reports, Jury Court (Scotland), 5 vols, 1816-1830
My & Cr...	Mylne & Craig's Reports, Chancery, 5 vols, 1835-1841 (ER vols 40-41)
My & K...	Mylne and Keen's Reports, Chancery, 3 vols, 1832-1835 (ER vols 39-40)
N & PEI...	Newfoundland and Prince Edward Island Reports, 1971-(current)
N & S...	Nichols and Stop's Reports (Tasmania)
NAC...	Native Appeal Cases (South Africa), 1894-1929

NB Dig...	New Brunswick Digest (Stevens), 1825-1880
NB Eq Rep...	New Brunswick Equity Reports, 4 vols, 1894-1912
NBR...	New Brunswick Reports, 34 vols, 1883-1929 (21-54 NBR)
NBR (2d)...	New Brunswick Reports, Second Series, 1949-(current)
NBR (All)...	New Brunswick Reports (Allen), 6 vols, 1848-1866 (6-11 NBR)
NBR (Ber)...	New Brunswick Reports (Berton), 1 vol, 1835-1839 (2 NBR)
NBR (Carl)...	New Brunswick Reports (Carleton), 1895-1902
NBR (Chip)...	New Brunswick Reports (Chipman), 1 vol, 1825-1835 (1 NBR)
NBR (Han)...	New Brunswick Reports (Hannay), 2 vols, 1867-1871 (12-13 NBR)
NBR (Kerr)...	New Brunswick Reports (Kerr), 3 vols, 1840-1848 (3-5 NBR)
NBR (P & B)...	New Brunswick Reports (Pugsley and Burbridge), 4 vols, 1878-1882 (17-20 NBR)
NBR (P & T)...	New Brunswick Reports (Pugsley & Trueman), 1882-1883
NBR (Pug)...	New Brunswick Reports (Pugsley), 3 vols, 1872-1877 (14-16 NBR)
NBR (Tru)...	New Brunswick Reports (Trueman) 5 vols, 1876-1912
NE...	North Eastern Reporter (USA), 1885-1936
NE 2d...	North Eastern Reporter, Second Series (USA), 1936-(current)
NI (preceded by date)...	Northern Ireland Law Reports, 1925-(current) (eg [1925] NI)
NIJB...	Northern Ireland Judgments Bulletin
NLJ...	New Law Journal, 1965-1984
NLJR...	New Law Journal Reports, 1988-(current)
NLJ Rep...	New Law Journal Reports, 1985-1987
NLR...	Natal Law Reports, 1879-1910
NPC...	New Property Cases, 1986-(current)
NPD...	Natal Provincial Division, South Africa, 1910-1946
NSD...	Nova Scotia Decisions, 3 vols, 1867-1874 (7-9 NSR)
NSR...	Nova Scotia Reports, 60 vols, 1834-1929
NSR (2d)...	Nova Scotia Reports, Second Series, 1970-(current)
NSR (Coch)...	Nova Scotia Reports (Cochran), 1 vol, 1859 (4 NSR)
NSR (G & R)...	Nova Scotia Reports (Geldert and Russell), 32 vols, 1895-1907 (28-39 NSR); 1907-1929 (41-60 NSR)
NSR (James)...	Nova Scotia Reports (James), 1 vol, 1853-1855 (2 NSR)
NSR (Old)...	Nova Scotia Reports (Oldright), 2 vols, 1860-1867 (5-6 NSR)
NSR (R & C)...	Nova Scotia Reports (Russell and Chesley), 3 vols, 1875-1879 (10-12 NSR)
NSR (R & G)...	Nova Scotia Reports (Russell and Geldert), 15 vols, 1879-1895 (13-27 NSR)
NSR (Thom)...	Nova Scotia Reports (Thomson), 2 vols, 1834-1852, 1856-1859 (1, 3 NSR)
NSR (W)...	Nova Scotia Reports (Wallace), 1 vol, 1884-1907 (40 NSR)
NSW Adm or Ad...	New South Wales Reports, Admiralty, 1880-1900
NSWB or Bkptcy Cas...	New South Wales Reports, Bankruptcy Cases, 1890-1899
NSW Eq...	New South Wales Reports, Equity, 1880-1900
NSW Ind Arbtrn Cas...	New South Wales Industrial Arbitration Cases, 1902-(current)
NSWLR...	New South Wales Law Reports, 1971-(current)

NSW Land App Cts...	New South Wales Land Appeal Courts, 1890-1921
NSWR...	New South Wales Reports, 1960-1970
NSWSCR (Eq)...	New South Wales Supreme Court Reports (Equity), 1862-1879
NSWSCR (L)...	New South Wales Supreme Court Reports (Law), 1862-1879
NSWSCRNS...	New South Wales Supreme Court Reports, New Series, 1878-1879
NSWWN...	New South Wales Weekly Notes, 1884-1970
NTR...	Northern Territory Reports
NW...	North-Western Provinces High Court Reports (India), 1869-1875
NW...	North Western Reporter (USA), 1879-1941
NW 2d...	North Western Reporter, Second Series (USA), 1941-(current)
NWTR...	North-West Territories Reports (Canada), 7 vols, 1885-1907
NY 2d...	New York Reports, Second Series, 1956-(current)
NYS...	New York Supplement, 1888-1938
NYS 2d...	New York Supplement, Second Series, 1938-(current)
NZCA...	New Zealand Court of Appeal, 3 vols, 1867-1877
NZ Jur...	New Zealand Jurist, 2 vols, 1873-1875
NZ Jur Mining Law...	New Zealand Jurist Mining Law, 1875-1879
NZ Jur NS...	New Zealand Jurist, New Series, 4 vols, 1875-1878
NZFLR...	New Zealand Family Law Reports
NZLJ...	New Zealand Law Journal, 1925-(current)
NZLR...	New Zealand Law Reports, 1883-(current)
NZLR (CA)...	New Zealand Law Reports, Court of Appeal, 5 vols, 1883-1887
NZLR (SC)...	New Zealand Law Reports, Supreme Court, 5 vols, 1883-1887
NZPCC...	New Zealand Privy Council Cases, 1 vol, 1840-1932
Nels...	Nelson's Reports, Chancery, 1 vol, 1625-1693 (ER vol 21)
Nev & MKB...	Neville and Manning's Reports, King's Bench, 6 vols, 1832-1836
Nev & MMC...	Neville and Manning's Magistrates' Cases, 3 vols, 1832-1836
Nev & PKB...	Neville and Perry's Reports, King's Bench, 3 vols, 1836-1838
Nev & PMC...	Neville and Perry's Magistrates' Cases, 1 vol, 1836-1837
New Mag Cas...	New Magistrates' Cases (Bittleston, Wise and Parnell), 5 vols, 1844-1850
New Pract Cas...	New Practice Cases (Bittleston and others), 3 vols, 1844-1848
New Rep...	New Reports, 6 vols, 1862-1865
New Sess Cas...	New Sessions Magistrates' Cases (Carrow, Hamerton, Allen, etc), 4 vols, 1844-1851
Nfld LR...	Newfoundland Law Reports, 14 vols, 1817-1940
Nolan...	Nolan's Magistrates' Cases, 1 vol, 1791-1793
Notes of Cases...	Notes of Cases in the Ecclesiastical and Maritime Courts, 7 vols, 1841-1850
Noy...	Noy's Reports, King's Bench, fol, 1 vol, 1558-1649 (ER vol 74)
O B & F...	Ollivier Bell and Fitzgerald's Reports (New Zealand), 1 vol,

	1878-1880
OBSP...	Old Bailey Session Papers, 76 vols, 1715-1834
O Bridg...	Sir Orlando Bridgman's Reports, Common Pleas, 1 vol, 1660-1666 (ER vol 124)
OFS...	Reports of the High Court of the Orange Free State, 1879-1883
OJ C...	Official Journal of the European Communities--communications and information series
OJ L...	Official Journal of the European Communities--legalisation series
OLR...	Ontario Law Reports, 66 vols, 1901-1930
O'M & H...	O'Malley and Hardcastle's Election Cases, 1869-1934
OPLR...	Occupational Pension Law Reports, 1995-(current)
OPD...	Orange Free State Provincial Division, South Africa, 1910-1946
OR...	Ontario Reports, 32 vols, 1882-1900
OR (preceded by date)...	Ontario Reports, 1931-1973 (eg [1931] OR)
OR (2d)...	Ontario Reports, Second Series, 1974-(current)
OR...	Official Reports of the South African Republic, 1894-1899
ORC...	Reports of the High Court of the Orange River Colony, 1903-1910
OS...	Upper Canada Queen's Bench, Old Series, 6 vols, 1831-1844
OWN...	Ontario Weekly Notes, 71 vols, 1909-1962
OWR...	Ontario Weekly Reporter, 27 vols, 1902-1914
Old...	Nova Scotia Reports (Oldright), 2 vols, 1860-1867 (5, 6 NSR)
Ont Dig...	Digest of Ontario Case Law, 4 vols, 1823-1900
Owen...	Owen's Reports, King's Bench and Common Pleas, fol, 1 vol, 1557-1614 (ER vol 74)
P (preceded by date)...	Law Reports, Probate, Divorce and Admiralty Division, 1890-1971 (eg (1891] P)
P...	Pacific Reporter (USA), 1883-1931
P 2d...	Pacific Reporter, Second Series (USA), 1931-(current)
P & B...	New Brunswick Reports (Pugsley and Burbridge), 4 vols, 1878-1882 (17-20 NBR)
P & CR...	Planning (Property) and Compensation Reports, 1950-(current)
P & MILL...	Personal and Medical Injuries Law Letter, 1986-2004 (now PI Comp)
P Cas...	Prize Cases Heard and Decided in the Prize Court during the Great War, 3 vols, 1914-1922
P Wms...	Peere Williams' Reports, Chancery and King's Bench, 3 vols, 1695-1735 (ER vol 24)
PCB (preceded by date)...	Private Client Business (eg [2001] PCB)
PCC...	Palmer's Company Cases
PD...	Law Reports, Probate, Divorce and Admiralty Division, 15 vols, 1875-1890
PEI...	Prince Edward Island Reports, 2 vols, 1850-1882
PI Comp...	Personal Injury Compensation, 2004-(current)
PIQR...	Personal Injury and Quantum Reports, 1992-(current)
PJ...	Police Journal, (eg (2010) PJ 83 1 (1))
PL...	Public Law (eg [2008] PL)

PLCR...	Planning Law Case Reports
PLR...	Planning Law Reports, 1988-(current)
PNLR...	Professional Negligence and Liability Reports, 1996-(current)
PR...	Ontario Practice Reports, 19 vols, 1848-1900
PTSR...	Public and Third Sector Law Reports, 2009-current
Palm...	Palmer's Reports, King's Bench, fol, 1 vol, 1619-1629 (ER vol 81)
Park...	Parker's Reports, Exchequer, fol, 1 vol, 1743-1767; App 1678-1717 (ER vol 145)
Pat App...	Paton's Scotch Appeals, House of Lords, 6 vols, 1726-1822
Pater App...	Paterson's Scotch Appeals, House of Lords, 2 vols, 1851-1873
Peake...	Peake's Reports, Nisi Prius, 1 vol, 1790-1794 (ER vol 170)
Peake Add Cas...	Peake's Additional Cases, Nisi Prius, 1 vol, 1795-1812 (ER vol 170)
Peck...	Peckwell's Election Cases, 2 vols, 1803-1806
Pelham...	S A Pelham Reports (Australia), 1865-1866
Per & Dav...	Perry and Davison's Reports, Queen's Bench, 4 vols, 1838-1841
Per & Kn...	Perry and Knapp's Election Cases, 1 vol, 1833
Per CS...	Perrault's Conseil Superieur de Québec, 1727-1759
Per P...	Perrault's Prévosté de Québec, 1726-1756
Ph...	Phillips' Reports, Chancery, 2 vols, 1841-1849 (ER vol 41)
Phil El Cas...	Phillips' Election Cases, 1 vol, 1780
Phillim...	J Phillimore's Ecclesiastical Reports, 3 vols, 1809-1821
Phillim Eccl Jud...	Sir R Phillimore's Ecclesiastical Judgments, 1 vol, 1867-1875
Phip...	Phipson's Digest of Natal Reports, 1858-1859
Pig & R...	Pigott and Rodwell's Registration Cases, 1 vol, 1843-1845
Pitc...	Pitcairn's Criminal Trials (Scotland), 3 vols, 1488-1624
Plowd...	Plowden's Reports, fol, 2 vols, 1550-1580, and Plowden's Queries, Vol I (ER vol 75)
Police Review...	Jane's Police Review
Poll...	Pollexfen's Reports, King's Bench, fol, 1 vol, 1670-1682 (ER vol 86)
Poph...	Popham's Reports, King's Bench, fol, 1 vol, 1591-1627 (ER vol 79)
Pow R & D...	Power, Rodwell and Dew's Election Cases, 2 vols, 1848-1858
Pratt...	Pratt's Supplement to Bott's Poor Laws, 1833
Prec Ch...	Precedents in Chancery, fol, 1 vol, 1689-1722 (ER vol 24)
Prentice-Hall...	Prentice-Hall Legal Service (South Africa), 1923-(current)
Price...	Price's Reports, Exchequer, 13 vols, 1814-1824 (ER vols 145-147)
Price...	Price's Mining Commissioners' Cases (Canada), 1 vol, 1906-1910
Pug...	New Brunswick Reports (Pugsley), 3 vols, 1872-1877 (14-16 NBR)
Py R...	Pykes' Lower Canada Reports, 1 vol, 1809-1810
QB...	Queen's Bench Reports (Adolphus and Ellis, New Series), 18 vols, 1841-1852 (ER vols 113-118)
QB (preceded by date)...	Law Reports, Queen's Bench Division, 1891-1900; and

	1952- (current) (eg [1891] 1 QB)
QBD...	Law Reports, Queen's Bench Division, 25 vols, 1875-1890
QCLLR...	Crown Lands Law Reports (Queensland), 1859-(current)
QJP...	Queensland Justice of Peace Reports, 1907-1972
QLJ...	Queensland Law Journal and Reports, 11 vols, 1879-1901
QLR...	Quebec Law Reports, 17 vols, 1874-1891
QLR...	Queensland Law Reports, 1 vol, 1876-1878
QLR (Beor)...	Queensland Law Reports by Beor, 1876-1878
QPR...	Quebec Practice Reports, 48 vols, 1897-1944
QR (vol no) KB <i>or</i> QB...	Rapports Judiciaires de Québec, Cour du Banc du Roi, 1892-(current)
QR (vol no) SC...	Rapports Judiciaires de Québec, Cour Supérieure, 1892-(current)
QSCR...	Queensland Supreme Court Reports, 5 vols, 1860-1881
QSR...	Queensland State Reports, 6 vols, 1902-1957
QWN...	Weekly Notes, Queensland, 1908-1972
Qd R...	Queensland Reports, 1958-(current)
R...	The Reports, 15 vols, 1893-1895
R...	Roscoe's Reports of the Supreme Court of the Cape of Good Hope, 1861-1867, 1871-1872, 1877-1878
R...	Rettie, Court of Session Cases (Scotland), 4th series, 25 vols, 1872-1898
R & C...	Nova Scotia Reports (Russell and Chesley), 3 vols, 1875-1879 (10-12 NSR)
R & G...	Nova Scotia Reports (Russell and Geldert) 15 vols, 1879-1895 (13-27 NSR)
R & IT...	Rating and Income Tax Reports, 53 vols, 1924-1960
R & N...	Rhodesia and Nyasaland Law Reports, 6 vols, 1956-1964
R de J...	Revue de Jurisprudence (Canada), 48 vols, 1895-1942
R de L...	Revue de Législation et de Jurisprudence, 3 vols, 1845-1848 (Canada)
RA (preceded by date)...	Rating Appeals, 1965-(current)
RAC...	Ramsay, Appeal Cases (Canada), 1873-1886
RC...	La Revue Critique de Législation et de Jurisprudence de Canada, 3 vols, 1871-1875
RCN (preceded by date)...	Rating Case Notes, 1965-(current)
RE Code 1/No (preceded by date)...	Selected Decisions by Umpire under Re-instatement in Civil Employment Act 1944 (eg [1945] RE Code 1/64)
RED...	New South Wales, Reserved and Equity Decisions, 1 vol, 1845
RED...	Ritchie's Equity Decisions (Russell) (Canada), 1 vol, 1873-1882
RJ...	Judgments of the Supreme Court of New South Wales for District of Port Phillip, 1846-1851
RJRQ...	Quebec Revised Reports, 29 vols, 1726-1891
RLNS...	Revue Légale, New Series (Canada), 1895-1942
RLOS...	Revue Légale, Old Series (Canada), 21 vols, 1869-1892
RLR...	Reports of the High Court of Rhodesia, 1964-1979 (eg 1968 (2) RLR (AD))
RPC...	Reports of Patent Cases, 1884-(1996); Reports of Patent, Design and Trade Mark Cases (1997)-(current)
RR...	Revised Reports, 152 vols, 1785-1866
RRC...	Ryde's Rating Cases, 1956-(current)
RTR (preceded by	Road Traffic Reports, 1970-(current) (eg [1970] RTR)

date)...	
RVR...	Rating and Valuation Reports, 1960-(current)
Rast...	Rastell's Entries
Rayn...	Rayner's Tithe Cases, 3 vols, 1575-1782
Real Prop Cas...	Real Property Cases, 2 vols, 1843-1847
Registrar's Reports of Selected Disputes...	Reports of Selected Disputes referred to the Registrar of Friendly Societies, 1938-1949
Rep Ch...	Reports in Chancery, fol, 3 vols, 1615-1710 (ER vol 21)
Res & Eq Jud...	New South Wales Reserved and Equity Judgments, 1 vol, 1845
Res Jud...	Res Judicatae (University of Melbourne), 7 vols
Reserv Cas...	Reserved Cases (Ireland), 1 vol, 1860-1864
Rick & M...	Rickards and Michael's Locus Standi Reports, 1 vol, 1885- 1889
Rick & S...	Rickards and Saunders' Locus Standi Reports, 1 vol, 1890-1894
Ridg L & S...	Ridgeway, Lapp and Schoales' Reports (Ireland), 1 vol, 1793-1795
Ridg Parl Rep...	Ridgeway's Parliamentary Reports (Ireland), 3 vols, 1784- 1796
Ridg <i>temp</i> H...	Ridgeway's Reports <i>temp</i> Hardwicke, 1 vol, King's Bench 1733-1736; Chancery, 1744-1746 (ER vol 27)
Ritch Eq Rep...	Ritchie's Equity Reports (Canada), 1 vol, 1872-1883
Rob Eccl...	Robertson's Ecclesiastical Reports, 2 vols, 1844-1853 (ER vol 163)
Rob L & W...	Roberts, Leeming, and Wallis' New County Court Cases, 1 vol, 1849-1851
Robert App...	Robertson's Scotch Appeals, House of Lords, 1 vol, 1707- 1727
Robin App...	Robinson's Scotch Appeals, House of Lords, 2 vols, 1840- 1841
Roll Abr...	Rolle's Abridgment of the Common Law, fol, 2 vols
Roll Rep...	Rolle's Reports, King's Bench, fol, 2 vols, 1614-1625 (ER vol 81)
Rom...	Romilly's Notes of Cases, 1 part, 1767-1787
Roscoe's BC...	Roscoe, Digest of Building Cases (4th Edn), 1900
Rose...	Rose's Reports, Bankruptcy, 2 vols, 1810-1816
Ross LC...	Ross's Leading Cases in Commercial Law (England and Scotland), 3 vols, 1853-1857
Rowe...	Rowe's Reports (England and Ireland), 1 vol, 1798-1823
Ruff...	Ruffhead's Edition of Statutes by Serjeant Runnington, 1786
Rul Cas...	Campbell's Ruling Cases, 27 vols, 1894-1908
Rus ER...	Russell's Election Reports (Canada), 1 vol, 1874
Russ...	Russell's Reports, Chancery, 5 vols, 1824-1829 (ER vol 38)
Russ & M...	Russell and Mylne's Reports, Chancery, 2 vols, 1829-1833 (ER vol 39)
Russ & Ry...	Russell and Ryan's Crown Cases Reserved, 1 vol, 1800- 1823 (ER vol 168)
Ry & Can Cas...	Railway and Canal Cases, 7 vols, 1835-1854
Ry & Can Tr Cas...	Railway and Canal Traffic Cases, 29 vols, 1855-1950
Ry & M...	Ryan and Moody's Reports, Nisi Prius, 1 vol, 1823-1826
Ryde & K Rat App...	Ryde and Konstam's Reports of Rating Appeals, 1 vol, 1894-1904

Ryde, Rat App...	Ryde's Rating Appeals, 3 vols, 1871-1893
S...	Searle's Reports of the Supreme Court of the Cape of Good Hope, 1850-1867
S & B Av R...	Shawcross & Beaumont Aviation Reports
SA...	South African Law Reports, 1947-(current) (eg 1954 (2) SA 999 (AD))
SAIR...	South Australian Industrial Reports, 1916-(current)
SALJ...	South African Law Journal, 1901-(current)
SALR...	South Australian Law Reports, 1865-1920
SALR...	South African Law Reports to 1946
SAR...	Reports of the High Court of the South African Republic, 1881-1892
SASR...	South Australian State Reports (eg [1921] SASR), 1921-(current)
SATC...	South African Tax Cases, 1921-(current)
SC...	Reports of the Supreme Court of the Cape of Good Hope, 27 vols, 1880-1910
SC (preceded by date)...	Court of Session Cases (Scotland), 1906-(current) (eg 1906 SC)
SC (HL) (preceded by date)...	Court of Session Cases (Scotland) (House of Lords), 1906-(current) (eg 1906 SC (HL))
SC (J) (preceded by date)...	Court of Justiciary Cases (Scotland), 1906-(current) (eg 1906 SC (J))
SCR...	Canada, Supreme Court Reports, 1876-(current)
SCR (NSW)...	Supreme Court Reports (New South Wales), 14 vols, 1862-1876
SCR (NS) (NSW)...	Supreme Court Reports (New South Wales) (New Series), 2 vols, 1878-1879
S Ct...	Supreme Court Reporter (USA), 1882-(current)
SE...	South Eastern Reporter (USA), 1887-1939
SE 2d...	South Eastern Reporter, Second Series (USA), 1939-(current)
SLT...	Scots Law Times, 1893-(current)
SQR...	Queensland State Reports, 1905-(current)
SR...	Reports of the High Court of Southern Rhodesia, 1911-1955
SRC...	Stuart's Lower Canada Reports, 1 vol, 1810-1835
SR (NSW)...	New South Wales, State Reports, 1901-1970
SR Qd...	Queensland Reports, Supreme Court, 5 vols, 1860-1881
STC (preceded by date)...	Simon's Tax Cases (eg [1973] STC)
STC (SCD)...	Simon's Tax Cases (Special Commissioners' Decisions)
STI...	Simon's Tax Intelligence (1973-1995), Simon's Weekly Tax Intelligence (1996-current)
SVAR...	Stuart's Vice-Admiralty Reports (Canada), 2 vols, 1836-1874
SW...	South Western Reporter (USA), 1886-1928
SW 2d...	South Western Reporter, Second Series (USA), 1928-(current)
SWA...	South-West Africa Law Reports, 1910-1946
Saint...	Saint's Digest of Registration Cases, 1 vol, 1843-1906
Salk...	Salkeld's Reports, King's Bench, 3 vols, 1689-1712 (ER vol 91)
Sask LR...	Saskatchewan Law Reports, 25 vols, 1907-1931

Sau & Sc...	Sausee and Scully's Reports, Rolls Court (Ireland), 1 vol, 1837-1840
Saund...	Saunders's Reports, King's Bench, 2 vols, 1666-1672 (ER vol 85)
Saund & A...	Saunders and Austin's Locus Standi Reports, 2 vols, 1895-1904
Saund & B...	Saunders and Bidder's Locus Standi Reports, 2 vols, 1905-1919
Saund & C...	Saunders and Cole's Reports, Bail Court, 2 vols, 1846-1848
Saund & M...	Saunders and Macrae's County Courts and Insolvency Cases (County Courts Cases and Appeals, Vols II and III), 2 vols, 1852-1858
Sav...	Savile's Reports, Common Pleas, fol, 1 vol, 1580-1591 (ER vol 123)
Say...	Sayer's Reports, King's Bench, fol, 1 vol, 1751-1756 (ER vol 96)
Sc Jur...	Scottish Jurist, 46 vols, 1829-1873
Sc LR...	Scottish Law Reporter, 61 vols, 1865-1924
Sc RR...	Scots Revised Reports
Sch & Lef...	Schoales and Lefroy's Reports, Chancery (Ireland), 2 vols, 1802-1806
Scott...	Scott's Reports, Common Pleas, 8 vols, 1834-1840
Scott NR...	Scott's New Reports, Common Pleas, 8 vols, 1840-1845
Sea & Sm...	Searle and Smith's Reports, Probate and Divorce, 1 vol, 1859-1860
Sel Cas Ch...	Select Cases in Chancery, fol, 1 vol, 1685-1698 (Pt III of Cas in Ch)
Selected Appeals...	Notes of decisions of the minister on planning appeals under the Town and Country Planning Act 1947, covering the period 1947-1957, and published by HMSO in Bulletins of Selected Appeal Decisions, Nos I-XIII
Selected Appeals (Second Series)...	Notes of Decisions of the minister on planning appeals under the Town and Country Planning Act 1947, covering the period 1958 onwards, and published by HMSO under the name Selected Planning Appeals, Second Series, Volume 1 onwards
Selwyn's NP...	Selwyn's Abridgement of the Law of Nisi Prius
Sess Cas KB...	Sessions Settlement Cases, King's Bench, 2 vols, 1710-1747 (ER vol 93)
Sett & Rem...	Cases adjudged in King's Bench concerning Settlements and Removals, 1 vol, 1685-1727
Sh...	Shaw, Court of Session Cases (Scotland), 1st series, 16 vols, 1821-1838
Sh & MacI...	Shaw and Maclean's Scotch Appeals, House of Lords, 3 vols, 1835-1838
Sh Ct Rep...	Sheriff Court Reports, 1885-1963
Sh Dig...	P Shaw's Digest of Decisions (Scotland), ed by Bell and Lamond, 3 vols, 1726-1868
Sh Just...	P Shaw's Justiciary Decisions (Scotland), 1 vol, 1819-1831
Sh Sc App...	P Shaw's Scotch Appeals, House of Lords, 2 vols, 1821-1824
Sh Teind Ct...	P Shaw's Teind Court Decisions (Scotland), 1 vol, 1821-1831
Shep Touch...	Sheppard's Touchstone of Common Assurances

Show...	Shower's Reports, King's Bench, 2 vols, 1678-1695 (ER vol 89)
Show Parl Cas...	Shower's Cases in Parliament, fol, 1 vol, 1694-1699 (ER vol 1)
Sid...	Siderfin's Reports, King's Bench, Common Pleas and Exchequer, fol, 2 vols, 1657-1670 (ER vol 82)
Sim...	Simon's Reports, Chancery, 17 vols, 1826- 1852 (ER vols 57-60)
Sim & St...	Simons and Stuart's Reports, Chancery, 2 vols, 1822-1826 (ER vol 57)
Sim NS...	Simons' Reports, Chancery, New Series, 2 vols, 1850-1852 (ER vol 61)
Skin...	Skinner's Reports, King's Bench, fol, 1 vol, 1681-1697 (ER vol 90)
Sm & Bat...	Smith and Batty's Reports, King's Bench (Ireland), 1 vol, 1824-1825
Sm & G...	Smale and Giffard's Reports, Chancery, 3 vols, 1852-1857 (ER vol 65)
Smith KB...	JP Smith's Reports, King's Bench, 3 vols, 1803-1806
Smith LC...	Smith's Leading Cases, 2 vols
Smith Reg Cas...	C L Smith's Registration Cases, 3 vols, 1895-1914
Smythe...	Smythe's Reports, Common Pleas (Ireland), 1 vol, 1839-1840
So...	Southern Reporter (USA), 1887-1941
So 2d...	Southern Reporter, Second Series (USA), 1941-(current)
SJ...	Solicitors' Journal, 1856-(current)
Spence...	Spence's Equitable Jurisdiction of the Court of Chancery, 2 vols, 1846-1849
Spinks...	Spinks' Prize Court Cases, 2 parts, 1854-1856
St R Qd...	Queensland State Reports, 1902-1957
Stair Rep...	Stair's Decisions, Court of Session (Scotland), fol, 2 vols, 1661-1681
Stark...	Starkie's Reports, Nisi Prius, 3 vols, 1814-1823 (ER vol 171)
Stat LR...	Statute Law Review (eg (2005) Stat LR)
State Tr...	State Trials, 34 vols, 1163-1820
State Tr Ns...	State Trials, New Series, 8 vols, 1820-1858
Stewart...	Stewart's Nova Scotia Admiralty Reports, 1 vol, 1803-1813
Stockton...	Stockton's Vice-Admiralty Report and Digest (Canada), 1 vol, 1879-1891
Story...	Story's Commentaries on Equity Jurisprudence
Stra...	Strange's Reports, 2 vols, 1716-1747 (ER vol 93)
Stu M & P...	Stuart, Milne and Peddie's Reports (Scotland), 2 vols, 1851-1853
Stuart...	Sessions Cases (Stuart), 1851-1853
Stuart Adm...	Stuart's Vice-Admiralty (Lower Canada) Cases, 1836-1856
Stuart Adm NS...	Stuart's Vice-Admiralty (Lower Canada) Cases, Second Series, 1859-1874
Stuart KB...	Stuart's Reports of Cases in King's Bench, etc (Lower Canada), 1 vol, 1810-1835
Sty...	Style's Reports, King's Bench, fol, 1 vol, 1646-1655 (ER vol 82)
Supp...	Halsbury's Law of England Cumulative Supplement
Sw...	Swabey's Reports, Admiralty, 1 vol, 1855-1859 (ER vol

	166)
Sw & Tr...	Swabey and Tristram's Reports, Probate and Divorce, 4 vols, 1858-1865 (ER vol 164)
Swan...	Swanston's Reports, Chancery, 3 vols, 1818-1821 (ER vol 36)
Swin...	Swinton's Justiciary Reports (Scotland), 2 vols, 1835-1841
Syd L Rev...	Sydney Law Review (current)
Syme...	Syme's Justiciary Reports (Scotland), 1 vol, 1826-1829
T & M...	Temple and Mew's Criminal Appeal Cases, 1 vol, 1848-1851
T Jo...	Sir T Jones's Reports, King's Bench and Common Pleas, fol, 1 vol, 1667-1685 (ER vol 84)
T Raym...	Sir T Raymond's Reports, King's Bench, fol, 1 vol, 1660-1683 (ER vol 83)
TC...	Tax Cases, 1875-(current)
TCLR...	Technology and Construction Law Reports
TH...	Reports of the Witwatersrand High Court (Transvaal Colony), 1902-1909
THR-HR...	Tydshrif vir Hedendaagse Romeins-Hollandse Reg (South Africa), 1936-(current)
TL...	Reports of the Witwatersrand High Court (Transvaal Colony), 1902-1910
TLI...	Tolley's Trust Law International
TLR...	The Times Law Reports, 71 vols, 1884-1950
TLR (preceded by date)...	The Times Law Reports, 1951-1952 (eg [1951] 1 TLR), 1990- (current)
TPD...	Transvaal Provincial Division, South Africa, 1910-1946
TR...	Taxation Reports, 1939-(current)
TS...	Reports of the Supreme Court of the Transvaal, 1902-1909, Vol 1(1)
Taml...	Tamlyn's Reports, Rolls Court, 1 vol, 1829-1830 (ER vol 48)
Tas LR...	Tasmanian Law Reports, 35 vols, 1905-1940
Tas SR...	Tasmanian State Reports, 1941-1966
Taunt...	Taunton's Reports, Common Pleas, 8 vols, 1807-1819 (ER vols 127-129)
Tax Cas...	Tax Cases, 1875-(current)
Tax J	Tax Journal
Taxation...	Taxation Journal, 1927-(current)
Tay...	Taylor's King's Bench Reports (Canada), 1 vol, 1823-1827
<i>Temp</i> Wood...	Manitoba Reports <i>temp</i> Wood, 1 vol, 1875-1883
Term Rep...	Term Reports (Durnford and East), fol, 8 vols, 1785-1800 (ER vols 99-101)
Terr LR...	Territories Law Reports (Canada), 7 vols, 1885-1907
Thom...	Nova Scotia Reports (Thomson), 2 vols, 1834-1852, 1856-1859 (1, 3 NSR)
Toth...	Tothill's Transactions in Chancery, 1 vol, 1559-1646 (ER vol 21)
Town St Tr...	Townsend, Modern State Trials, 2 vols
Tr L...	Trading Law Reports, 1893-(current)
Traf Cas...	Traffic Cases decided by the Transport Tribunal, 1951 (Vol 30-current) (in continuation of Ry & Can Tr Cas Vols 1-29)
Trem PC...	Tremaine Pleas of the Crown, 1 vol, 1667
Trist...	Tristram's Consistory Judgments, 1 vol, 1872-1890

Tru...	New Brunswick Reports (Trueman), 5 vols, 1876-1912
Tudor LC Merc Law...	Tudor's Leading Cases on Mercantile and Maritime Law
Tudor LC Real Prop...	Tudor's Leading Cases on Real Property
Turn & R...	Turner and Russell's Reports, Chancery, 1 vol, 1822-1825 (ER vol 37)
Tyr...	Tyrwhitt's Reports, Exchequer, 5 vols, 1830-1835
Tyr & Gr...	Tyrwhitt and Granger's Reports, Exchequer, 1 vol, 1835-1836
UC Jur...	Upper Canada Jurist, 1844-1848
UCLJNS...	Canada Law Journal, New Series, 58 vols, 1865-1922
UCLJOS...	Canada Law Journal, Old Series, 10 vols, 1855-1864
UCR...	Upper Canada Reports, King's Bench, 6 vols, 1831-1844; Queen's Bench, 46 vols, 1844-1881; Common Pleas, 32 vols, 1850-1882
UKHL...	Official neutral citation for judgments of the House of Lords
UKPC...	Official neutral citation for judgments of the Privy Council
US...	Reports of Cases in the Supreme Court of the United States of America (1754-current)
Udal...	Fiji Law Reports (Udal), 1895-1897
Univ QLJ...	University of Queensland Law Journal, 6 vols
Univ WAL Rev...	University of Western Australia Law Review, 3 vols
V & DR...	Value Added Tax and Duties Tribunal Reports
VATTR...	Value Added Tax Tribunal Reports, 1973-(current)
VLR...	Victorian Law Reports, 1875-1956
VLT...	Victorian Law Times, 2 vols, 1856-1857
VR...	Victorian Reports, 1870-1872; 1957-(current)
VR (Adm)...	Victorian Reports (Admiralty)
VR (Eq)...	Victorian Reports (Equity)
VR (L)...	Victorian Reports (Law)
Vaugh...	Vaughan's Reports, Common Pleas, fol, 1 vol, 1666-1673 (ER vol 124)
Vent...	Ventris' Reports (Vol I, King's Bench; Vol II, Common Pleas), fol, 2 vols, 1668-1691 (ER vol 86)
Vern...	Vernon's Reports, Chancery, 2 vols, 1680-1719 (ER vol 23)
Vern & Scr...	Vernon and Scriven's Reports, King's Bench (Ireland), 1 vol, 1786-1788
Ves...	Vesey Jun's Reports, Chancery, 19 vols, 1789-1817 (ER vols 30-34)
Ves & B...	Vesey and Beames's Reports, Chancery, 3 vols, 1812-1814 (ER vol 35)
Ves Sen...	Vesey Sen's Reports, 2 vols, 1747-1756 (ER vols 27-28)
Vin Abr...	Viner's Abridgment of Law and Equity, fol, 22 vols, 1741-1753
Vin Supp...	Supplement to Viner's Abridgment of Law and Equity, 6 vols
W...	Watermeyer's Reports of the Supreme Court of the Cape of Good Hope, 1857
W & W...	Wyatt and Webb (Australia), 2 vols, 1861-1863
W Jo...	Sir W Jones's Reports, King's Bench and Common Pleas, fol, 1 vol, 1620-1640 (ER vol 82)

WA'B & W...	Webb, A'Beckett and Williams' Victorian Reports (Australia), 1870- 1872
WALR...	West Australian Law Reports, 60 vols, 1898-1959
WAR...	Western Australian Reports, 1960-(current)
WCC...	Workmen's Compensation Cases (Minton-Senhouse), 9 vols, 1898-1907
WCR (NSW)...	Workmen's Compensation Reports (New South Wales), 1926-(current)
WIR...	West Indian Reports, 1958-(current)
WLD...	Witwatersrand Local Division, South Africa, 1910-1946
WLR...	Western Law Reporter (Canada), 34 vols, 1905-1916
WLR (preceded by date)...	Weekly Law Reports, 1953-(current)
WLT...	Western Law Times (Canada), 12 vols, 1889-1896
WN (preceded by date)...	Law Reports, Weekly Notes, 1866-1952 (eg [1866] WN)
WN...	Calcutta Weekly Notes, 1896-1941
WN (NSW)...	Weekly Notes (New South Wales), 1884-1970
WPAR...	Reports of Selected War Pensions Appeals, covering the period 1944 onwards. (These Reports were prepared in the Legal Department of the Ministry of Pensions and National Insurance, but not published by HMSO or on sale to the public. They were distributed to certain organisations concerned with these appeals and are available in certain legal libraries)
WR...	Weekly Reporter, 54 vols, 1852-1906
WR...	Sutherland's Weekly Reporter (India), 1864-1877
WR...	Weekly Reporter, Reporting cases in the Cape Provincial Division, 1912-1914
WTLR...	Wills and Trusts Law Reports, 2000-(current)
WW & A'B...	Wyatt, Webb and A'Beckett (Australia), 6 vols, 1864-1869
WWR...	Western Weekly Reports (Canada), 108 vols, 1912-1950; 1971-(current)
WWR (NS)...	Western Weekly Reports New Series, 75 vols, 1950-1970
Wallis by Lyne...	Wallis' Reports, Chancery (Ireland), 1 vol, 1766-1791
Web Pat Cas...	Webster's Patent Cases, 2 vols, 1602-1855
Welsh Reg Cas...	Welsh's Registry Cases (Ireland), 1 vol, 1832-1840
Went Off Ex...	Wentworth's Office and Duty of Executors
West...	West's Reports, House of Lords, 1 vol, 1839-1841 (ER vol 9)
West <i>temp</i> Hard...	West's Reports <i>temp</i> Hardwicke, Chancery, 1 vol, 1736-1740 (ER vol 25)
West Tithe Cas...	Western's London Tithe Cases, 1 vol, 1592-1822
White...	White's Justiciary Reports (Scotland), 3 vols, 1886-1893
White & Tud LC...	White and Tudor's Leading Cases in Equity, 2 vols
Wight...	Wightwick's Reports, Exchequer, 1 vol, 1810-1811 (ER vol 145)
Will Woll & Dav...	Willmore, Wollaston, and Davison's Reports, Queen's Bench and Bail Court, 1 vol, 1837
Will Woll & H...	Willmore, Wollaston, and Hodges' Reports, Queen's Bench and Bail Court, 2 vols, 1838-1839
Willes...	Willes' Reports, Common Pleas, 1 vol, 1737-1758 (ER vol 125)
Wilm...	Wilmot's Notes of Opinions and Judgments, 1 vol, 1757-1770 (ER vol 97)
Wils...	G Wilson's Reports, King's Bench and Common Pleas, fol,

Wils & S...	3 vols, 1742-1774 (ER vol 95)
Wils Ch...	Wilson and Shaw's Scotch Appeals, House of Lords, 7 vols, 1825-1835
Wils Ex...	J Wilson's Reports, Chancery, 2 vols, 1818- 1819 (ER vol 37)
Win...	J Wilson's Reports, Exchequer in Equity, 1 part, 1817 (ER vol 159)
Wm Bl...	Winch's Reports, Common Pleas, fol, 1 vol, 1621-1625 (ER vol 124)
Wm Rob...	William Blackstone's Reports, King's Bench and Common Pleas, fol, 2 vols, 1746-1779 (ER vol 196)
Wms Saund...	William Robinson's Reports, Admiralty, 3 vols, 1838-1850 (ER vol 166)
Wolf & B...	Williams' Notes to Saunders' Reports (6th Edn), 2 vols, 1871
Wolf & D...	Wolferstan and Bristowe's Election Cases, 1 vol, 1859-1864
Woll...	Wolferstan and Dew's Election Cases, 1 vol, 1857-1858
Wood...	Wollaston's Reports, Bail Court and Practice, 1 vol, 1840-1841
Y & C Ch Cas...	Wood's Tithe Cases, Exchequer, 4 vols, 1650-1798
Y & C Ex...	Younge and Collyer's Reports, Chancery Cases, 2 vols, 1841-1843 (ER vols 62-63)
Y & J...	Younge and Collyer's Reports, Exchequer in Equity, 4 vols, 1833-1841 (ER vol 160)
YAD...	Younge and Jervis' Reports, Exchequer, 3 vols, 1826-1830 (ER vol 148)
YB...	Young's Admiralty Decisions (Canada), 1 vol, 1865-1880
YB (Rolls Series)...	Year Books
YB (Sel Soc)...	Year Books (Rolls Series)
Yelv...	Year Books (Selden Society)
You...	Yelverton's Reports, King's Bench, fol, 1 vol, 1602-1613 (ER vol 80)
	Younge's Reports, Exchequer in Equity, 1 vol, 1830-1832 (ER vol 159)

Information contained in *Index to Legal Citations and Abbreviations*, 2nd edition by Donald Raistrick (Copyright 1993) is used with grateful acknowledgement to the publishers, Bowker-Saur, a division of Reed Elsevier (UK) Ltd.

Halsbury's Laws of England/STOP PRESS/APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009

STOP PRESS

APPRENTICESHIPS, SKILLS, CHILDREN AND LEARNING ACT 2009

The Apprenticeships, Skills, Children and Learning Act 2009 makes provision about apprenticeships, education, training and children's services, establishes and makes provision about the Young People's Learning Agency for England, the office of Chief Executive of Skills

Funding, the Office of Qualifications and Examinations Regulation and the School Support Staff Negotiating Body, makes provision about the Qualifications and Curriculum Authority, about schools and institutions within the further education sector, and about student loans. The Act received the royal assent on 12 November 2009 and the following provisions came into force on that day: ss 262-265, 267-270. Sections 58, 198-201, 205, Schs 14 and 16 (in part) came into force on 12 January 2010: SI 2009/3341. Sections 55, 56, 59, 112(1)-(3), 125, 126, 178(2), 193 (in part), 195, 202(1), (2), 203, 204, 225 (in part), 226, 227-241, 251-258, 261, 266 (in part), Schs 2 (in part), 8 (in part), 13, 15, 16 (in part) also came into force on 12 January 2010: SI 2009/3317. Section 194(1)-(3) came into force for certain purposes on 26 February 2010: SI 2010/303. Sections 41-44, 46, 47, 53, 54, 57, 60-90, 100-104, 106-111, 112 (so far as not already in force), 113-124, 125 (so far as not already in force), 193(2)(b), 194 (so far as not already in force), 196, 197, 225 (so far as not already in force), 256, Sch 2 para 1 (in part), Sch 2 paras 2-5, 7-9 (so far as not already in force), Schs 3-7, Sch 8 (so far as not already in force), and Sch 16 (in part) came into force on 1 April 2010: SI 2010/303. Section 40 and Sch 1 came into force for certain purposes on 6 April 2010: SI 2010/303. Sections 206-224 (for certain purposes), and Sch 16 Pt 7 came into force on 19 April 2010: SI 2010/303. Sections 48-50 (in relation to England for certain purposes), ss 51, 52 (in relation to England), ss 242-250 and Sch 2 (so far as not already in force) come into force on 1 September 2010: SI 2010/303. So far as not already in force, Section 40 and Sch 1 come into force on 6 April 2011: SI 2010/303. The remaining provisions come into force on a day or days to be appointed. For details of commencement see the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet.

Part 1 (ss 1-40) Apprenticeships, study and training

Chapter 1 (ss 1-39) Apprenticeships

Section 1 sets out the circumstances in which a person completes an English apprenticeship in the context of an apprenticeship framework and s 2 sets out the circumstances in which a person completes a Welsh apprenticeship in the context of an apprenticeship framework. Sections 3-6, in relation to England, and ss 7-10, in relation to Wales, make provision about apprenticeship certificates, and specify when an apprenticeship certificate must, or may, be issued to a person. The contents of apprenticeship certificates are set out in s 11. 'Apprenticeship framework' is defined by s 12. Provision is made as to the English issuing authority and the Welsh issuing authority (ss 13, 18), the submission of draft frameworks for issue and the issue of apprenticeship frameworks (ss 14, 16, 19, 21), the notification and publication of recognised frameworks (ss 15, 20), and for the treatment of an existing vocational specification as if it were an apprenticeship framework (ss 17, 22). Section 23 empowers the Secretary of State to direct the Chief Executive of Skills Funding to prepare a draft specification of apprenticeship standards, and s 28 empowers the Welsh Ministers to prepare a draft specification of apprenticeship standards. Provision as to the modification and contents of a specification of apprenticeship standards, and related matters, is made by ss 24-27, 29-31. Section 32 defines an 'apprenticeship agreement', which will be a contract entered into between the employer and the apprentice, and provision is made by ss 33-36 as to ineffective provisions, variation, the status of apprenticeship agreements, and relating to Crown servants and Parliamentary staff. A person may satisfy the duty to participate in education or training imposed by the Education and Skills Act 2008 s 2 by participating in training in accordance with an apprenticeship agreement: 2009 Act s 37. The Secretary of State must specify apprenticeship sectors: s 38. Section 39 is interpretational.

Chapter 2 (s 40) Study and training

Section 40 amends the Employment Rights Act 1996 so as to introduce a right for qualifying employees to make a statutory application to their employer in relation to study or training,

require employers to deal with such requests in line with regulations and provide for enforcement. Certain related statutory amendments are made by the 2009 Act Sch 1.

Part 2 (ss 41-59) LEA functions

Section 41 requires local education authorities ('LEAs') to secure enough suitable full and part-time education and training opportunities to meet the reasonable needs of young people who are over compulsory school age but under 19 and certain other people in their area. Section 42 requires LEAs to encourage young people for whom they are responsible to participate in education and training, and to encourage employers to participate in the provision and delivery of post-16 education and training. By virtue of s 43, a LEA in England is empowered to direct a maintained school for which it is not the admissions authority to admit a particular child to its sixth form. Section 44 empowers LEAs to direct institutions within the further education sector in England which provide education suitable to the requirements of young people over compulsory school age but under 19, to provide specified young people of that age and within the LEA's area with such education. Section 46 enables LEAs, when securing suitable education and training provision for young people subject to a learning assessment, to also secure boarding accommodation for them. LEAs may secure the provision of work experience for people within their area who are over compulsory school age but under 19, and those aged 19 but under 25 for whom a learning difficulty assessment has been conducted: s 47. By virtue of s 48, LEAs with relevant youth accommodation in their area must secure that enough suitable education and training is provided to meet the reasonable needs of the children and young people in the youth justice system held in youth detention accommodation. Section 49 provides that the functions of LEAs, the Secretary of State, the Welsh Ministers and parents under the Education Act 1996 do not apply in relation to persons detained pursuant to a court order or an order of recall of the Secretary of State. The 2009 Act s 50 gives powers to and imposes responsibilities on LEAs concerning the education and training of persons detained in youth accommodation. Section 51 requires youth offending teams to notify the person's home and host LEA when they become aware that a child or young person has been detained in relevant youth accommodation, or has been transferred to a new place of detention. Provision is made by s 52 for the revival of a statement of special educational needs which had been maintained for a person prior to their detention in juvenile custody on their release. Sections 53-57 make provision relating to LEAs' responsibilities in their provision of transport for persons of sixth form age, and make provision as to complaints about such transport arrangements. Section 58 removes a prospective power of LEAs to make arrangements in relation to the provision of education at non-maintained schools. Section 59 introduces Sch 2, which provides for minor and consequential amendments.

Part 3 (ss 60-80) The Young Person's Learning Agency for England

Chapter 1 (s 60) Establishment

Section 60 establishes the Young People's Learning Agency for England ('YPLA') as a body corporate and Sch 3 makes detailed provision about the YPLA.

Chapter 2 (ss 61-74) Main functions

Section 61 requires the YPLA to secure the provision of financial resources to certain persons who provide education and training to young persons and to LEAs, and s 62 enables the YPLA to set certain conditions on the financial resources it provides. Section 63 provides for the YPLA to make performance assessments, s 63 allows it to carry out means tests and s 65 provides for a general prohibition on charging for education or training provided for young people over compulsory school age funded by the YPLA. The YPLA is empowered to commission education or training for persons over compulsory school age but under 19, and certain other learners: s 66. The YPLA may, under s 67, give directions to a LEA which is failing, or likely to fail, in its

duty to secure enough suitable education and training for young people aged over compulsory school age but under 19, and certain other learners. Section 68 empowers the YPLA to provide and receive payment for services to specified persons and bodies listed in connection with any of the recipient's functions relating to education and training. The YPLA may take part in arrangements for assisting person to select, train for, obtain and retain employment: ss 69, 70. By virtue of s 71, the YPLA may carry out research relating to any matter relevant to any of its functions. The YPLA must issue guidance to local education authorities about the performance of their duties to secure that all young people in their area over compulsory school age but under 19, and certain other persons, have access to enough suitable education and training provision: s 72. Under s 73, the YPLA must prepare and consult on a policy statement which sets out the detail of its policy on its powers of intervention. Section 74 allows the Secretary of State to confer supplementary functions on the YPLA.

Chapter 3 (ss 75, 76) YPLA's functions: supplementary

Section 75 empowers the Secretary of State to give directions to the YPLA concerning its functions, objectives or management and s 76 requires the YPLA to have regard to any guidance provided to it by the Secretary of State in performing its functions.

Chapter 4 (ss 77-79) Academy arrangements

Under s 77, the Secretary of State may require the YPLA to enter into arrangements with the Secretary of State, under which the YPLA may be required to carry out specified functions of the Secretary of State relating to Academies, city technology colleges and city colleges for the technology of the arts. The Secretary of State may pay grants to the YPLA for purposes of academy arrangements functions: s 78. Provision is made by s 79 about information sharing relating to academy arrangements.

Chapter 5 (s 80) General

Section 80 provides for the interpretation of Pt 3.

Part 4 (ss 81-121) The Chief Executive of Skills Funding

Chapter 1 (ss 81-99) Establishment and main duties

Section 81 provides for there to be a Chief Executive of Skills Funding ('the Chief Executive'), who is to be appointed to the office by the Secretary of State and whose functions will be limited to England. Further provision as to the Chief Executive is made by Sch 4. The Secretary of State may direct the Chief Executive to designate a person to carry out apprenticeship functions on behalf of the Chief Executive: s 82. Section 83 empowers the Chief Executive to secure the provision of facilities for apprenticeship training of young people and s 84 enables the Chief Executive to enter into arrangements with LEAs when securing such training. Section 85 sets out the general duty on the Chief Executive to promote apprenticeships for young people to employers, and encourage them to employ young people as apprentices. The Chief Executive has a general duty under s 86 to secure the provision of reasonable facilities for the education and training for persons aged 19 or over and those who are detained in a prison or an adult young offender institution. Sections 87-89 and Sch 5 requires the Chief Executive to secure the provision of proper facilities for education and training to enable adults who lack particular skills to obtain relevant qualifications, and to ensure that learners will not be liable to pay fees for courses of study so provided. The Chief Executive's general duty to encourage participation in education and training amongst people aged 19 or over and others subject to adult detention is set out in s 90. The Chief Executive has a duty to secure sufficient apprenticeship places for every suitably qualified person within one of the categories of people eligible for the offer who wants one: ss 91, 93. Section 92 specifies the eligibility criteria for persons who may elect for the apprenticeship offer, and provides that a person who elects for the offer should select two apprenticeship sectors for the purposes of the offer. Section 94

makes further provision about the suitability and availability of apprenticeship places. Section 95 sets out the qualifications a person must have to elect for the apprenticeship offer at level 2 or level 3, and s 96 provides for interpretation. The Secretary of State may suspend the apprenticeship offer in a specified geographical area in relation to particular apprenticeship sector or at a particular level for up to two years (s 97), and may amend the age under which people other than care leavers are eligible for the apprenticeship offer (s 98). Section 99 provides for interpretation.

Chapter 2 (ss 100-111) Other functions

Section 100 gives the Chief Executive powers to fund other persons for the purpose of fulfilling the duties and exercising the powers vested in him or her and s 101 permits the Chief Executive to attach conditions to the financial resources which he or she makes available. The Chief Executive may adopt or develop schemes for the assessment of the performance of individual providers of education and training and may take this assessment into account when deciding which providers he or she will continue to fund under s 100: s 102. Section 103 allows the Chief Executive to carry out means tests or arrange for others to do so in order to establish how much financial support students may be eligible to receive in respect of the costs of education or training. Under s 104, the Chief Executive may provide or secure provision of services to assist people to find apprenticeships. The Chief Executive must promote the progression to a level 3 apprenticeship where a person has completed a level 2 apprenticeship: s 105. Section 106 allows the Secretary of State to require the Chief Executive to provide advice and assistance to enable the Secretary of State to discharge responsibilities for statutory apprenticeships, and s 107 empowers for the Chief Executive to provide services for individuals and to bodies exercising education and training functions in relation to those functions. Sections 108 and 109 empower the Chief Executive to assist persons to select, train for, obtain and retain employment. Section 110 sets out the role of the Chief Executive in relation to research and the provision of information and advice, and the establishment of systems for collecting information. The Secretary of State may confer on the Chief Executive additional functions connected to the functions of the Secretary of State and relevant to the provision of facilities for education or training within the remit of the Chief Executive: s 111.

Chapter 3 (ss 112-120) Chief executive's functions: supplementary

Section 112 allows the Secretary of State to specify an area of England outside Greater London as an area for which a specified body may formulate and keep under review a strategy for how education and training for those persons that the Chief Executive is responsible for is to be delivered. Similar provision is made in relation to Greater London by s 113. The Chief Executive has a duty under s 114 to implement any strategy formulated by a body set up under the powers contained in ss 112 and 113. In performing his or her functions, the Chief Executive must have regard to the needs of persons who are aged 19 or over who have learning difficulties and persons with learning difficulties who are subject to adult detention: s 115. Section 116 provides that the Chief Executive must have regard to the needs of persons in prisons and adult young offender institutions in the performance of the functions of the office. The Chief Executive must have regard to any information which has been provided by a person designated by the Secretary of State: s 117. In performing the functions of the office, the Chief Executive must have regard to any guidance given by the Secretary of State: s 118. The Secretary of State may, under s 119, direct the Chief Executive to secure that funding he or she provides is not used to make payments in respect of certain specified qualifications and, under s 120, give directions to the Chief Executive about what overarching objectives he or she should be seeking to achieve in performing the functions of the office.

Chapter 4 (s 121) General

Section 121 provides for interpretation of Pt 4.

Part 5 (ss 122-124) Parts 2 to 4: Supplementary

Section 122 allows bodies and persons replacing the Learning and Skills Council to share information for education and training purposes to enable or facilitate the exercise of their functions. Section 123 provides for the dissolution of the Learning and Skills Council for England. Section 123 also introduces Sch 6, which provides for minor and consequential amendments, and s 124 introduces Sch 7, which gives the Secretary of State power to make schemes to enable the transfer of staff and property from the Learning and Skills Council to various bodies.

Part 6 (ss 125, 126) The sixth form college sector

Section 125 introduces Sch 8, which contains provisions for a new sixth form college sector. The power of LEAs to establish additional sixth form schools is removed by s 126.

Part 7 (ss 127-174) The Office of Qualifications and Examinations Regulation

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Section 127 establishes the Office of Qualifications and Examinations Regulation ('Ofqual') as a body corporate. Schedule 9 contains detailed provisions about Ofqual, its constitution and proceedings. Ofqual's objectives, which relate to 'regulated qualifications' (as defined in s 130) and 'regulated assessment arrangements' (as defined in s 131), in discharging its functions are (1) the qualifications standards objective; (2) the assessments standards objective; (3) the public confidence objective; (4) the awareness objective; and (5) the efficiency objective: s 128. Section 129 requires Ofqual, in carrying out its functions, so far as is reasonably practicable, to act in a way that is compatible with its objectives under s 128 and which it considers most appropriate for the purposes of meeting those objectives.

Chapter 2 (ss 132-158) Functions in relation to qualifications

Section 132 requires Ofqual to recognise awarding bodies in respect of specific qualifications or descriptions of qualification, or in respect of credits for components of qualifications, thereby confirming that the body is fit to award or authenticate the qualifications or qualifications of a description for which it is recognised. Ofqual has discretionary powers to set the criteria it will use to decide whether to recognise an awarding body (s 133), may impose general conditions on recognition (s 134), and may impose certain other conditions on recognition (s 135). Section 136 sets out the test that must be met before Ofqual can impose a fee capping condition, and the process that must be used where Ofqual proposes to do so. Section 137 places limits on what Ofqual may require under an entry and inspection condition. Ofqual may decide that a certain qualification, or qualifications falling within a certain description, is or are subject to the accreditation requirement, so that a recognised body cannot award or authenticate any form of such a qualification unless the particular form is individually accredited: s 138. Provision is made by s 139 for the process of accrediting particular forms of qualifications, and provision is made by s 140 requiring Ofqual to publish the criteria for accreditation or any subsequent revisions of those criteria. The Secretary of State may make an order specifying the minimum requirements in respect of knowledge, skills or understanding that someone must be able to demonstrate to gain a particular qualification or a qualification of a particular description: s 141. Before making an order under s 141, the Secretary of State must consult with Ofqual and with others as appropriate (s 142) and, when such an order has been made, Ofqual must set recognition criteria, recognition conditions, and/or accreditation criteria for the qualification or description of qualification to secure that those minimum requirements are met (s 143). The Secretary of State may by order revoke an order specifying minimum requirements: s 144. A recognised body which is offering a form of a relevant qualification must assign to it a number of hours of guided learning, for the purposes of determining whether a person studying for the

qualification is able to meet this requirement: s 145. Section 146 requires Ofqual to publish the criteria which recognised bodies must apply in order to determine whether they need to assign guided learning hours to a qualification, and if so the number of hours they should assign to a form of the qualification. A recognised body may, under s 147, surrender recognition by giving notice to Ofqual. Section 148 sets out Ofqual's obligation to maintain a register of recognised bodies, and the details of the qualifications in respect of which they are recognised and forms of those qualifications that they offer, and s 149 allows Ofqual to keep under review any connected activities of a recognised awarding body. Ofqual may investigate complaints in respect of the award or authentication of a regulated qualification, or arrange for an independent party to do so: s 150. Section 151 confers power on Ofqual, in certain circumstances, to direct a recognised body in order to secure compliance with a condition imposed on its recognition. Ofqual may withdraw recognition in respect of some or all of the qualifications in respect of which a body is recognised if the body has breached a condition of recognition: s 152. Under s 153, Ofqual must publish a statement on how it will perform its monitoring and enforcement functions and guidance to recognised bodies in relation to the award and authentication of qualifications. Ofqual may keep under review all aspects of qualifications to which Pt 7 applies (s 154), must keep under review any system used by the Secretary of State which is for allocating values to qualifications by reference to the level of attainment indicated by the qualifications and for the purposes of a qualifications-based performance management system (s 155). Section 156 allows Ofqual to co-operate or work jointly with another public authority where it is appropriate to do so for the efficient and effective performance of any of its functions in connection with qualifications, and s 157 allows Ofqual to provide information to qualifications regulators elsewhere in the United Kingdom to support the qualifications functions of the other regulator. Section 158 provides for interpretation.

Chapter 3 (ss 159-166) Functions in relation to assessment arrangements

Sections 159, 160 require the Secretary of State to consult Ofqual before making an order specifying assessment arrangements in relation to each of the key stages of the national curriculum and the Early Years Foundation Stage ('EYFS'), s 161 requires Ofqual to keep all aspects of these assessments arrangements under review, and s 162 empowers them to require the Secretary of State, national curriculum responsible bodies and EYFS responsible bodies and Ofsted to provide it with the information it considers it needs to perform this role. Under s 163, Ofqual must notify the Secretary of State and any responsible body whose act or omission appears to Ofqual to have contributed to a significant failing if it considers that there is or is likely to be a significant failing in the assessment arrangements. Ofqual must publish and keep under regular review the 'NC assessments regulatory framework' and the 'EYFS assessments regulatory framework' documents: ss 164, 165. Section 166 provides for interpretation.

Chapter 4 (ss 167-171) Other functions

Section 167 empowers Ofqual to provide services to other persons in connection with any of its functions, s 168 requires Ofqual to provide the Secretary of State with information or advice relating to its functions where the Secretary of State requests it, and s 169 empowers Ofqual to carry out research in relation to qualifications that would be eligible for regulation or in relation to regulated assessment arrangements. Section 170 imposes a duty on Ofqual not to impose or maintain unnecessary regulatory burdens. Under s 171, Ofqual must publish an annual report and may also prepare and publish other reports.

Chapter 5 (ss 172-174) General

Section 172 provides for interpretation. Section 173 introduces Sch 10, which empowers the Secretary of State to transfer the staff and property of the Qualifications and Curriculum Agency to Ofqual. Schedule 12, which contains minor and consequential amendments, is introduced by s 174.

Part 8 (ss 175-192) The Qualifications and Curriculum Development Agency

Chapter 1 (ss 175-177) The QCDA, objective and general duties

Section 175 renames the Qualifications and Curriculum Agency as the Qualifications and Curriculum Development Agency ('QCDA') and introduces Sch 11, which contains detailed provisions with respect to the constitution and proceedings of the QCDA. Section 177 sets out the matters to which the QCDA must have regard in exercising its functions and pursuing its overall objective.

Chapter 2 (ss 178-180) Functions in relation to qualifications

Section 178 defines which qualifications fall within the QCDA's remit and allows the Secretary of State to exclude qualifications from the QCDA's remit. Section 179 sets out the QCDA's duties and powers in relation to qualifications within its remit and s 180 provides for the QCDA to assist Ofqual in relation to its qualifications functions.

Chapter 3 (ss 181-183) Functions in relation to curriculum, early years foundation stage and assessment

Section 181 sets out the QCDA's duties and powers with respect to the curriculum in maintained schools in England for pupils who are of compulsory school age, and pupils in maintained nursery schools. QCDA's duties and powers with respect to early learning goals and educational programmes are set out in s 182 and its duties and powers with respect to assessment arrangements within its remit are set out in s 183.

Chapter 4 (ss 184-190) Other functions and supplementary provision

Section 184 contains provision enabling the QCDA to provide services or other assistance in relation to specified matters, s 185 requires QCDA to advise the Secretary of State on any matters relating to education or training in England which the Secretary of State refers to it, and s 186 requires the QCDA to carry out such ancillary activities relating to its functions as the Secretary of State may direct. The QCDA to co-operate or work jointly with other public bodies, where it is appropriate for the efficient and effective performance of any of its functions: s 187. The Secretary of State may confer supplementary functions on the QCDA, may issue directions to the QCDA as to the performance of any of its functions: s 188, 189. Section 184 requires the QCDA, in performing its functions, to have regard to any guidance given by the Secretary of State.

Chapter 5 (ss 191, 192) General

Section 191 provides for interpretation and s 192 introduces Sch 12, which contains minor and consequential amendments resulting from the establishment of Ofqual and the revised regime for the QCDA.

Part 9 (ss 193-202) Children's Services

Section 193 specifies further persons who must co-operate with the local authority in the making of arrangements under provision concerning the promotion of co-operation to improve the well-being of children. Section 194 requires children's services authorities to set up Children's Trusts Boards ('CTBs'), and transfers to CTBs the duty currently imposed on children's services authorities to prepare and review a Children and Young People's Plan ('CYPP'). Section 195 provides for the Secretary of State to set statutory targets for children's services authorities in England for safeguarding and promoting the welfare of children, s 196 requires each Local Safeguarding Children Board in England to include two representatives of the local community, and s 197 requiring each Local Safeguarding Children Board in England to produce and publish a report at least once a year about safeguarding and promoting the welfare of

children in its area. Local authorities in England must make appropriate arrangements for the provision of children's centres and Her Majesty's Chief Inspector of Education, Children's Services and Skills ('the Chief Inspector') must inspect children's centres and publish reports of his or her inspections: ss 198, 199. Section 200 provides for the Independent Barring Board to maintain lists of persons barred in relation to work with children or vulnerable adults, and to monitor persons who have applied to be subject to monitoring. Section 201 requires a local authority in England to make certain arrangements in respect of early childhood services and s 202 imposes certain duties on such an authority in relation to their funding for early years providers.

Part 10 (ss 203-241) Schools

Chapter 1 (ss 203-205) Schools causing concern

Section 203 introduces Sch 13, which makes provision for the Secretary of State's reserve intervention powers in relation to schools in England causing concern, and s 204 makes provision relating to the Secretary of State's powers to require LEAs in England to obtain advisory services. Section 205 introduces Sch 14, which makes provision for the Welsh Ministers' reserve intervention powers in relation to schools in Wales causing concern.

Chapter 2 (ss 206-224) Complaints: England

Section 206 specifies who may approach a Local Commissioner under the new parents' and young person's independent complaints service. Provision as to investigation of complaints about by a Local Commissioner, time-limits, procedure, powers of Local Commissioners in their investigations and statements about investigations is made by s 207-211. Further provision relating to complaints is made by ss 212-222. Section 223 provides for consequential amendments and s 224 provides for interpretation.

Chapter 3 (ss 225, 226) Inspections

Section 225 makes provision in relation to the powers of the Chief Inspector and associated duties of schools and s 226 makes provision so as to entitle administrators supplied by inspection service providers to enter an institution being inspected and assist inspectors by performing administrative tasks during the course of that inspection.

Chapter 4 (ss 227-241) School support staff pay and conditions: England

Section 227 establishes the School Support Staff Negotiating Body ('SSSNB') and introduces Sch 15, which makes further provision about the SSSNB. Section 228 specifies that the SSSNB's remit relates to the pay and conditions of employment relating to the duties and working time of school support staff in England, and allows the Secretary of State to include or exclude matters by order. Section 229 enables the Secretary of State to refer a matter within the SSSNB's remit to the SSSNB for consideration and s 230 allows the SSSNB to consider certain other matters within its remit and to submit any agreement it reaches about the matter to the Secretary of State. Where the SSSNB submits an agreement to the Secretary of State, the Secretary of State may either ratify the agreement or refer the agreement back to the SSSNB for further consideration: s 231. Sections 232 and 233 provide for the reconsideration of agreement by the SSSNB, and s 234 provides for the powers of Secretary of State in absence of SSSNB agreement. Provision is made by ss 235-237 concerning orders by the Secretary of State ratifying an agreement submitted by the SSSNB. The Secretary of State and, with the Secretary of State's approval, the SSSNB may issue guidance relating to agreements: s 238. Section 239 provides for the establishment of the non-statutory School Support Staff Negotiating Body to be treated as the establishment of the SSSNB. Sections 240 and 241 provide for interpretation.

Part 11 (ss 242-249) Learners

Section 242 gives members of staff of a school in England power to search pupils for prohibited items and to seize any prohibited items or evidence in relation to an offence so found. Section 243 makes consequential amendments to ensure that the status quo is retained in relation to searches in a school in Wales. Section 244 extends the search powers of staff of further education institutions in England to cover controlled drugs, alcohol and stolen property and to seize such items found during the course of a search. Section 245 makes consequential amendments to ensure that the status quo is retained in relation to searches in further education institutions in school in Wales. The governing body of a school in England must ensure that a procedure is in place for recording significant incidents where a member of staff has used force on a pupil and to take reasonable steps to ensure that the procedure is followed by staff at the school: s 246. Similar provision is made in relation to further education institutions in England by s 247. The governing body of a maintained secondary school in England, and the proprietor of an academy, city technology college or city college for the technology of the arts in England, must make arrangements to co-operate with at least one other relevant partner with a view to achieving specified objectives: s 248. Section 249 changes the name of pupil referral units in England to 'short stay schools'.

Part 12 (ss 250-261) Miscellaneous

Section 250 requires state secondary schools in England to ensure that the programme of careers education includes information on options available in respect of 16-18 education or training and, specifically, information on apprenticeships. Under s 251, the Secretary of State may direct a local authority to provide information about its planned and actual expenditure on its education and its children's social services functions and about 'accountable resources' held, received or expended by any person in relation to a school maintained by the authority. Further provision as to such information about expenditure is made by s 252 and consequential amendments are made by s 253. Sections 254 and 255 make provision concerning to support for participation in education and training. Provision is made as to the co-operation and promotion of well-being by further education corporations in England by s 256. By virtue of ss 257 and 258, a student loan made to a borrower who enters an individual voluntary arrangement will be treated in a similar way as it is currently treated under a bankruptcy. Section 259 enables the Privy Council to make orders granting further education institutions in Wales the power to award foundation degrees. Section 260 empowers the Welsh Ministers to make regulations which would set out a complaints procedure that will become compulsory for all governing bodies of maintained schools in Wales. A minor amendment is made by s 261.

Part 13 (ss 262-270) General

Section 262 provides for the making of orders and regulations and s 263 deals with the making of directions. Section 264 provides for interpretation. The Secretary of State may, under s 265, make supplementary, incidental, consequential, transitory, transitional or saving provisions. Section 266 introduces Sch 16, which provides for repeals and revocations, s 267 deals with financial provision, s 268 with extent, s 269 with commencement and s 270 with short title.

Amendments, repeals and revocations

Subscribers should note that the lists below mention repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. Please also note that these lists are not exhaustive.

Specific provisions of a number of Acts are amended, added or repealed. These include: Further and Higher Education Act 1992 ss 19, 19A, 33A-33N, 51A, 56D-56J, 76, 85AA-85AD, 85D;

Charities Act 1993 Sch 2; Employment Rights Act 1996 ss 13A, 17A-17D, 47F, Pt 6A (ss 63D-63K), 104E, 569A; Education Act 1996 ss 15ZA-15ZC, 18A, 312A, 408, 409, 508F-508I, 509, 509AB, 509AE, 514A, 550ZA-550ZD, 560A, 562, 562A-562J, Sch 1; Education Act 1997 ss 21-26A, 30, 32, 32ZA, 32A-32C, 36, 58, Schs 4, 7; Crime and Disorder Act 1998 s 39A; School Standards and Framework Act 1998, ss 45A, 47ZA, 53, 128, Sch 30 paras 64, 214; Learning and Skills Act 2000 ss 1-29, 98(2A), 99(2A), 103, 113A, Sch 9 para 69; Education Act 2002 ss 62A, 76, 87, 96, 208A, 216, Schs 17, 21; Children Act 2004 ss 9A, 10, 12A-12D, 13, 14A, 17, 17A; Public Audit (Wales) Act 2004 Sch 2; Education Act 2005 ss 10A, 14A, 16A; Education and Inspections Act 2006 ss 11, 60A, 67, 69, 69A, 69B, 75, 81, 93A, Schs 12, 14; Childcare Act 2006 ss 5A-5G, 42, 98A-98G, Sch 1; Further Education and Training Act 2007 ss 1, 2, 4-16; and Education and Skills Act 2008 ss 9, 15, 76, 76A, 159-163.

Halsbury's Laws of England/STOP PRESS/CHILD MAINTENANCE AND OTHER PAYMENTS ACT 2008

CHILD MAINTENANCE AND OTHER PAYMENTS ACT 2008

The Child Maintenance and Other Payments Act 2008 establishes the Child Maintenance and Enforcement Commission, amends the law relating to child support, and makes provision about lump sum payments to or in respect of persons with diffuse mesothelioma. The Act received the royal assent on 5 June 2008 and the following provisions came into force on that day: ss 55, 59 (in part), 61-63. Section 35 came into force on 6 June 2008. The following provisions came into force on 10 June 2008: ss 56, 57 (in part), 59, 60 (in part) (SI 2008/1476). Further provisions came into force on 10 June 2008 for certain purposes only: ss 1, 46 (in part), 47 (in part), 48 (in part), 49 (in part), 50 (in part), 53, 54, Sch 1 (SI 2008/1476). The following provisions came into force on 14 July 2008: ss 15, 45, Sch 7 (in part), Sch 8 (in part) (SI 2008/1476). Further provisions came into force on 24 July 2008: ss 1, 2, 3 (in part), 4-12 (SI 2008/2033). Section 43 came into force on 5 August 2008: SI 2008/2033. Further provisions came into force on 1 October 2008: ss 46-54 (SI 2008/1476). Further provisions came into force on 6 April 2010: s 24, Sch 7 para 3 (SI 2010/697). The remaining provisions come into force on a day or days to be appointed. For details of commencement, see the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet.

Part 1 (ss 1-12) The Child Maintenance and Enforcement Commission

Section 1, Sch 1 provide that there will be a new body corporate called the Child Maintenance and Enforcement Commission and set out how the Commission will be structured. Section 2 sets out the main objective of the Commission, which is to maximise the number of effective child maintenance arrangements in place, and also sets out two subsidiary objectives, which are to encourage and support parents to make and keep their own maintenance arrangements, and to support the making of applications for child support maintenance under the Child Support Act 1991 and to enforce maintenance arrangements made under that Act where appropriate. The 2008 Act s 3 sets out that the Commission has functions relating to child support transferred to it from the Secretary of State, and any other functions conferred under this Act or other legislation. By virtue of s 4, the Commission is under a duty to take such steps as it considers appropriate to raise awareness among parents of the importance of taking responsibility for the maintenance of their children and if they live apart, making appropriate maintenance arrangements. Section 5 places a duty on the Commission to provide relevant information and guidance to help establish effective and appropriate maintenance arrangements for children who live apart from one or both of their parents. Under s 6, the

Secretary of State has regulation-making powers to enable the Commission to charge fees in connection with the exercise of its functions. The Commission may make arrangements with a government department or prescribed public body, for the functions of one of them to be exercised on their behalf by the other, or for one to provide administrative, professional or technical services to the other: s 7. By virtue of s 8, the Commission may contract out any of its functions to another person or organisation. Section 9 requires the Commission to produce a report for each financial year, which must deal with the activities of the Commission in the financial year for which it is prepared, and include the report prepared by the non-executive functions committee. Under s 10, the Secretary of State may give written guidance and directions to the Commission regarding the exercise of its functions. Section 11 sets out that the Secretary of State must review the status of the Commission as a Crown body, as soon as is reasonably practicable after the end of an initial three-year period, and may review any other time after that if he considers it appropriate. Section 12 sets out the definition of 'child' for these purposes and makes provision for the Secretary of State to make regulations about when a child is to be regarded as living apart from a parent.

Part 2 (ss 13, 14) Transfer of child support functions etc to the Commission

Section 13, Schs 2, 3 transfer most of the functions under the Child Support Act 1991 from the Secretary of State to the Commission, including functions relating to calculation, collection and enforcement. By virtue of the 2008 Act s 14, the Secretary of State may make one or more schemes to transfer property, rights and liabilities which he is entitled or subject, in connection with the transferred functions, or under arrangements entered into in preparation for the coming into force of the Commission's functions.

Part 3 (ss 15-45) Child support etc

Section 15 repeals the Child Support Act 1991 ss 6, 46. The 2008 Act s 16, Sch 4 amend legislation regarding how maintenance calculations are performed. Section 17 provides a regulation-making power to the Secretary of State in relation to the supersession of decisions. By virtue of s 18, the Commission must, on receipt of an application from a person with care to vary a maintenance calculation, consider any information or evidence that is available to it or take steps to obtain further information or evidence, if it appears that further information would affect a decision to vary a maintenance calculation. Section 19, Sch 5 make provision for the movement of existing cases onto the new calculation rules and provide that the Commission may require the parties in existing cases to choose whether to remain in the statutory scheme under the new calculation rules or to leave the scheme as far as future liability is concerned. Section 20 makes it clear that regulations as to the method by which payments of child support maintenance are to be made can include deduction from earnings orders as an initial method of collection. What will be considered as 'earnings' for the purpose of deduction from earnings orders is defined by s 21. Section 22 enables the Commission to deduct child support maintenance from the non-resident parent's account. Provision made by s 23 relates to lump sum deduction orders, which enable the Commission to collect payments from a non-resident parent's account held with a deposit-taker, or from money due or accruing to them from a third party; such orders may be used only to collect arrears and not ongoing maintenance. By virtue of s 24, the Commission may apply to a court to prevent a non-resident parent who has failed to pay maintenance from disposing of or transferring property, if it is being done to avoid paying child support maintenance. Section 25 introduces a new liability order which will be made administratively by the Commission and which will certify the amount owed by the non-resident parent, and will be the first step to enforcement action. Section 26 removes the requirement that an order from a county court needs to be obtained before an application for a charging order or a third party debt order can be made; such an application can now be made where an administrative liability order has been made. Under s 27, the Commission has the

power to apply to a court to disqualify a non-resident parent for holding or obtaining a travel authorisation. The Commission also has the power to apply to a magistrates' court for a curfew order to be made against a non-resident parent who fails to pay maintenance: s 28. By virtue of s 29, the Commission may make a separate application to a magistrates' court to commit a non-resident parent to prison for failure to pay child support maintenance. Section 30 enables the Commission to make a separate application to a magistrates' court to disqualify a non-resident parent for holding or obtaining a driving licence if they fail to pay child support maintenance. Section 31 provides the Secretary of State with regulation-making powers enabling the Commission to offset liabilities to pay child support maintenance, including arrears, in prescribed circumstances. Under ss 32, 33, the Commission may accept partial payments of maintenance arrears from a non-resident parent in final settlement of the whole arrears, and may write off arrears in certain circumstances. Section 34 provides regulation-making power to the Secretary of State, to enable the Commission to enter into arrangements with other persons or organisations under which liability in respect of arrears of child support maintenance becomes debt due to such a person or organisation. Section 35 applies in relation to Scotland and relates to registered maintenance agreements. Provision dealing with offences relating to the provision of information is made by s 36. Section 37 allows for the offset of maintenance liabilities where two parents of the same children each have care for one or more of those children. By virtue of s 38, the Secretary of State has the power to make regulations to enable arrears of child support maintenance to be recovered from the estate of a deceased non-resident parent. Section 39 enables a party to family proceedings to disclose information relating to those proceedings to the Commission or to a person providing services to the Commission without such a disclosure being a contempt of court, unless a court dealing with the proceedings directs that the section does not apply. Provision made by s 40 relates to the disclosure of information to credit reference agencies. Section 41 enables the power to pilot any regulation-making power under the 1991 Act. The definition of 'child' in the 1991 Act is substituted by the 2008 Act s 42. Section 43 provides for the write off of outstanding liability in respect of interest and fees. Information sharing gateways are set out by s 44, Sch 6. Section 45 amends the provisions concerning liable relatives and the exclusion of the parental duty to maintain contained in the Social Security Administration Act 1992.

Part 4 (ss 46-54) Lump sum payments: mesothelioma etc

Section 46 provides for the Secretary of State to make a lump sum payment to either a person with diffuse mesothelioma, or to their dependant if the person with diffuse mesothelioma is deceased. The conditions that must be satisfied by persons with mesothelioma, and by a dependant of a person who, immediately before their death, suffered from mesothelioma in order for a lump sum payment to be made are set out by s 47. Section 48 sets out how a claim for a lump sum payment is to be made. By virtue of s 49, the Secretary of State may reconsider a decision not to make a lump sum payment where there is a change in circumstances that may affect the claim since the decision was taken, or a decision to make or not to make a lump sum payment if the original decision was made in ignorance or based on error about the facts of the case. A person who has made a claim for a payment under s 46, will have a right of appeal to an appeal tribunal against a decision made by the Secretary of State on the claim, or a decision made following a reconsideration: s 50. Section 51 provides a right of appeal to a Social Security Commissioner against any decision of an appeal tribunal under s 50, on the ground that the decision was wrong in law. Section 52 concerns how lump sum payments are to be made to a person under the age of 18, or a person who lacks capacity within the meaning of the Mental Capacity Act 2005 in relation to financial matters. By virtue of the 2008 Act s 53, the Secretary of State has the power to make regulations by statutory instrument, which includes power to make such incidental, supplementary or transitional power as the Secretary of State thinks fit. The Social Security (Recovery of Benefits) Act 1997 is amended by the 2008 Act s 54 so as to provide the Secretary of State with powers to make regulations providing for the recovery of lump sum payments made under the Pneumoconiosis etc (Workers' Compensation)

Act 1979, the new scheme or those made on an extra-statutory basis following the rejection of a claim made under that Act.

Part 5 (ss 55-63) General

Section 55 provides that, where the Secretary of State is empowered to make regulations, these are to be made by statutory instrument. Section 56 deals with interpretation, and s 57, Sch 7 contain minor and consequential amendments. Repeals are dealt with by s 58, Sch 8, and s 59 makes transitional provision. Financial provision is made by s 60. Section 61 deals with extent, s 62 makes provision for commencement, and s 63 specifies the short title.

Amendments, repeals and revocations

Subscribers should note that the list below mentions repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. This information may also be found in the COMMENCEMENT OF STATUTES table in the *Current Service* Noter-up booklet. Please also note that this list is not exhaustive.

Specific provisions of the Child Support Act 1991 are repealed: ss 4(9), (11), 6, 11(3)-(5), 33, 34, 37, 39A, 46, 47, 50(5), Sch 2. The following provisions are added to the 1991 Act: ss 32A-32N, 39B-39Q, 41C-41E, 43A, 49A, 49B-49D, 51A.

Halsbury's Laws of England/STOP PRESS/CHILD POVERTY ACT 2010

CHILD POVERTY ACT 2010

The Child Poverty Act 2010 sets targets relating to the eradication of child poverty and makes other provision about child poverty. The Act received the royal assent on 25 March 2010 and ss 1-18, 27-32 came into force on that day. Sections 19-26 came into force on 25 May 2010.

Part 1 (ss 1-18) National targets, strategies and reports

Section 1 places a duty on the Secretary of State to lay before Parliament a report on whether the 2010 target has been met. By virtue of s 2, there is a duty on the Secretary of State to ensure that the targets relating to relative low income, combined low income and material deprivation, absolute low income and persistent poverty, are met in relation to the target year. Section 3 sets the relative low income target. The combined low income and material deprivation target is set by s 4. Section 5 sets the absolute low income target. The persistent poverty target is set by s 6. Section 7 enables provision to be made for a number of technical terms underpinning the child poverty targets in Pt 1 to be defined in regulations. Section 8 establishes the Child Poverty Commission ('the Commission') and introduces Sch 1, which sets out details about the Commission. By virtue of s 9, a duty is placed on the Secretary of State to publish and lay before Parliament a United Kingdom child poverty strategy, within 12 months of royal assent. Section 10 sets out the role of the Commission in providing advice to the government and specifies who the Secretary of State must consult in preparing United Kingdom strategies. Sections 11-13 deal with Scotland and Northern Ireland. Section 14 imposes a duty on the Secretary of State to produce and lay before Parliament annual reports and includes other provision relating to those reports. The Secretary of State is required by s 15 to include a statement in the report which must describe whether the targets in ss 3-6 have been met.

Under s 16, economic circumstances and the likely impact of any measure on the economy, and the fiscal circumstances and the likely impact of implementing any proposed measure on taxation, public spending and public borrowing are required to be taken into account by the Secretary of State when preparing a United Kingdom strategy, and by the Commission when considering any advice to be given to the Secretary of State or the devolved administration. Section 17 introduces Schedule 2, which contains provision regarding the continuing effect of the targets after the target year. Section 18 deals with interpretation.

Part 2 (ss 19-25) Duties of local authorities and other bodies in England

Section 19 sets out which local authorities will be 'responsible local authorities' for the purposes of Pt 2. Section 20 lists public bodies and persons who will be 'partner authorities' in relation to responsible local authorities for the purposes of Pt 2. A duty is imposed by s 21 on each responsible local authority to make arrangements to promote co-operation between the authority, each of its partner authorities, and such other persons or bodies as the authority considers appropriate. Under s 22, a responsible local authority is required to prepare and publish an assessment of the needs of children living in poverty in its area. Section 23 requires the arrangements to co-operate made by a responsible local authority to include arrangements to prepare a joint child poverty strategy in relation to the authority's area to modify it in accordance with specified provisions. Section 24 amends the Local Government Act 2000 s 4, with the effect that the local authorities are required to take account of the local child poverty needs assessment, the joint child poverty strategy and other arrangements they have made to tackle child poverty in their area when preparing their sustainable community strategy. The 2010 Act s 25 defines 'child poverty' for the purposes of Pt 2.

Part 3 (ss 26-32) Miscellaneous and general

Section 26 concerns the provision of free school lunches and milk. Section 27 deals with interpretation. Section 28 makes provision in respect of the exercise of powers to make regulations and orders. Section 29 makes financial provision. Section 30 deals with extent, s 31 with commencement and s 32 with the short title.

Amendments, repeals and revocations

Subscribers should note that the list below mentions amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. Please also note that this list is not exhaustive.

Specific provision of a number of Acts are amended. These include: Education Act 1996 s 512ZB(4); and Local Government Act 2000 s 4.

Halsbury's Laws of England/STOP PRESS/CHILDREN AND YOUNG PERSONS ACT 2008

CHILDREN AND YOUNG PERSONS ACT 2008

The Children and Young Persons Act 2008 makes provision about the delivery of local authority social work services for children and young persons, the functions of local authorities and others in relation to children and young persons, the enforcement of care standards in relation to certain establishments or agencies connected with children, and the independent review of determinations relating to adoption. The Act received the royal assent on 13 November 2008

and the following provisions came into force on that date: ss 7, 39-41, 43-45, Sch 3 paras 1-3, 5-28. The remaining provisions come into force on a day or days to be appointed.

Part 1 (ss 1-6) Delivery of social work services for children and young persons

Section 1 enables a local authority to enter into arrangements with a body corporate for the discharge by that body of some or all of the authority's social services functions in relation to individual children who are looked after by the authority and such functions in relation to care leavers. By virtue of s 2, restrictions are placed on the functions that may be the subject of arrangements. Under s 3, any acts or omissions of a provider of social work services or its employees are to be treated as the acts and omissions of a local authority. Section 4 provides for the regulation of providers of social work services. By virtue of s 5, the power to enter into an arrangement with a provider of social work services is a social services function. Section 6 enables the piloting of arrangements for a period of up to five years.

Part 2 (ss 7-33) Functions in relation to children and young persons

Section 7 imposes a general duty on the Secretary of State to promote the well-being of children in England. Section 8, Schs 1, 2 re-enact the duties on local authorities to provide accommodation for children who are in their care and to maintain all looked after children in other respects apart from the provision of accommodation. A general duty is placed on a local authority by s 9 to take steps to secure sufficient accommodation that is appropriate for the needs of children looked after by the authority within its authority area. Sections 10-14 make provision in respect of independent reviewing officers. By virtue of s 15, local authorities are required to ensure that all looked after children and children who were looked after, but ceased to be looked after as a result of prescribed circumstances, are visited by a representative of the local authority and that appropriate advice, support and assistance is made available to them. Section 16 extends the group of looked after children for whom an independent person must be appointed to visit, befriend and advise to include all those for whom an appointment would be in their interests. Section 17 ensures that, when accommodation is provided for a child for at least three months or the provision of accommodation for a child ceases, notification is sent to the local authority's director of children's services or lead director for children and young people's services. A duty is placed on a responsible authority by s 18 to make arrangements for the children of whom it is notified to be visited. Section 19 provides that services provided to children in need and their families must include such services as a local authority considers appropriate with respect to accommodated children. By virtue of s 20, the governing body of a maintained school is required to designate a member of staff as having responsibility for promoting the educational achievement of looked after children who are registered pupils at the school. Section 21 adds to the duties owed by local authorities to former relevant children by requiring the authorities to pay a fixed sum to those who go on to pursue a course of higher education. Section 22 extends the duties of local authorities to appoint a personal adviser to include a former relevant child who informs the responsible authority that he is pursuing or intends to pursue a programme of education or training but to whom the local authority would otherwise owe no duty because the young person is over 21 years of age and has completed the programme set out in his original pathway plan. Under s 23, the upper age range in respect of which the appointment of a personal adviser may be required is extended to persons who are under the age of 25. By virtue of s 24, the restrictions on the making of cash payments by local authorities to children in need are lifted by removing the requirement that such payments can only be made in exceptional circumstances. Under s 25, a duty is imposed on local authorities to provide breaks from caring to assist parents and others who provide care for disabled children. Sections 26-29 amend the Care Standards Act 2000 to confer additional powers and duties on the registration authority in relation to standards in children's social care settings. The 2008 Act s 30 ensures that provisions for the discharge of emergency protection orders are

compatible with the European Convention on Human Rights arts 6 and 8. Under the 2008 Act s 31, a duty is placed on registrars to provide local safeguarding children boards in their sub-district with certain information in relation to deceased children. Section 32 enables the Registrar General to provide, to the Secretary of State and to Welsh Ministers, information about a deceased person who may have been a child at the time of death. By virtue of s 33, the Secretary of State and local authorities are provided with a statutory power to conduct research into the functions of local safeguarding children boards.

Part 3 (ss 34-35) Adoption and fostering

Section 34 amends the Adoption and Children Act 2002 s 12 to ensure that the provisions are aligned with new provisions that relate to the independent review of qualifying determinations in relation to local authority foster carers. By virtue of the 2008 Act s 35, the period allowed for making regulations under the Children Act 2004 ss 45 or 46 is extended to seven years.

Part 4 (ss 36-38) Orders under Part 2 of the 1989 Act

The 2008 Act s 36 provides that an application for a residence order may be made by a relative, without first seeking the permission of the court, in circumstances where a child has been living with the relative for one year immediately prior to the application. By virtue of s 37, a residence order lasts until a child reaches the age of 18 unless the court directs that the order should end earlier or another order is made prior to that date discharging the residence order. Section 38 makes provision in respect of a relative's entitlement to apply for a special guardianship order.

Part 5 (ss 39-45) Supplementary, general and final provisions

Section 39, Sch 3 make supplementary amendments to the Children Act 1989. Section 40 makes provision in respect of the exercise of powers to make orders and regulations. Section 41 deals with interpretation. Section 42, Sch 4 deal with repeals, 43 with extent, s 44 with commencement and s 45 with the short title.

Amendments, repeals and revocations

Subscribers should note that the lists below mention repeals which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. This information may also be found in the COMMENCEMENT OF STATUTES table in the *Current Service* Noter-up booklet. Please also note that this list is not exhaustive.

Specific provisions of a number of Acts are amended or repealed. These include: Children Act 1989 ss 10, 23, 25, 26, 45(9), 83, 85, 86; Care Standards Act 2000 ss 21, 22; Adoption and Children Act 2002 s 12; Children Act 2004 s 47.

Halsbury's Laws of England/STOP PRESS/CORONERS AND JUSTICE ACT 2009

CORONERS AND JUSTICE ACT 2009

The Coroners and Justice Act 2009 makes provision in relation to coroners, about the investigation of deaths and certification and registration of deaths, to amend the criminal law,

about criminal justice and about dealing with offenders, about the Commissioner for Victims and Witnesses, relating to the security of court and other buildings, about legal aid and about payments for legal services provided in connection with employment matters, for payments to be made by offenders in respect of benefits derived from the exploitation of material pertaining to offences and to amend the Data Protection Act 1998. The Act received the royal assent on 12 November 2009 and the following provisions came into force on that day: ss 47, 48, 116, 143, 151, 152, 154, 176, 177 (in part), 178 (in part), 179, 181, 183, Schs 18, 21-23 (in part). Further provisions came into force on 14 December 2009: ss 106 (in part and in the relevant local justice areas), 107 (in the relevant local justice areas), 108 (in the relevant local justice areas), 109, 110: SI 2009/3253. Further provisions came into force on 1 January 2010: ss 86-97, Schs 21-23 (in part): s 182(3). Further provisions came into force on 12 January 2010: ss 73, 138, 178 (in part), Schs 21-23 (in part): s 182(2). Further provisions came into force immediately before 1 February 2010: s 142 and Sch 23 Pt 5 (in part) (SI 2010/145). Further provisions came into force on 1 February 2010: ss 35, 59-61, 72, 112, 114, 115, 118(2) (for certain purposes), 140, 141, 149, 150, 153, 173 (in part), 174, 175 (in part), 180, Sch 12, Sch 15 paras 1-4, 5 (for certain purposes), 6, 7 (for certain purposes), 9, 10 (for certain purposes), Sch 20 paras 1-3, Sch 21 paras 53-61, 74-78, Sch 22 paras 7-11, 25, 28, 39, and Sch 23 (in part) (SI 2010/145). Further provisions came into force on 6 April 2010: ss 62-71, 74-85, 113, 118 (so far as it is not already in force), 119-136, 146, 147, 155-172, 173 (so far as it is not already in force), 175 (in part), 177 (for certain purposes), 178 (in part), Schs 13, 15 (so far as it is not already in force), 19, 20 (in part), 21-23 (in part) (SI 2010/816). Further provisions came into force on 4 October 2010: ss 52, 54, 55, 56(1), (2)(a), 57, 177 (in part), 178 (in part), Schs 21 (in part), 23 (in part) (SI 2010/816). The remaining provisions come into force on a day or days to be appointed. For details of commencement, see the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet.

Part 1 (ss 1-51) Coroners etc

Chapter 1 (ss 1-17) Investigations into deaths

Section 1 establishes a senior coroner's duty to investigate certain deaths. A senior coroner who is under a duty to conduct an investigation may request a senior coroner for another area to conduct the investigation: s 2. Under s 3, the Chief Coroner may direct a senior coroner to conduct an investigation into a person's death even though, apart from the direction, a different senior coroner would be under a duty to conduct it. Section 4 makes provision for the discontinuance of investigation where the cause of death is revealed by post-mortem examination. The matters to be ascertained are who the deceased was, how, when and where the deceased came by his death and the particulars required by the Births and Deaths Registration Act 1953 to be registered concerning the death: 2009 Act s 5. A senior coroner who conducts an investigation into a person's death must hold an inquest into the death: s 6. Section 7 specifies whether a jury is required. Where there is a jury, the jury at an inquest is to consist of seven, eight, nine, ten or eleven persons: s 8. Section 9 makes provision as to determinations and findings by jury. Section 10 specifies the determinations and findings to be made after hearing the evidence at an inquest into a death. Section 1, Sch 1 make provision about suspension and resumption of investigations. Section 12 concerns investigation in Scotland. The circumstances in which investigation in England and Wales may be made, despite a body being brought to Scotland, are given in s 13. A senior coroner may request a suitable practitioner to make a post-mortem examination of a body: s 14. Under s 15, a senior coroner may order the body to be removed to any suitable place. A senior coroner who is conducting an investigation into a person's death that has not been completed or discontinued within a year must notify the Chief Coroner of that fact and must notify the Chief Coroner of the date on which the investigation is completed or discontinued: s 16. The Chief Coroner must monitor investigations into service deaths and secure that coroners conducting such investigations are suitably trained to do so: s 17.

Chapter 2 (ss 18-21) Notification, certification and registration of deaths

The Lord Chancellor may make regulations requiring a registered medical practitioner to notify a senior coroner of a death of which the practitioner is aware: s 18. Primary care trusts, in England, and local health boards, in Wales, must appoint persons as medical examiners to discharge the functions conferred on medical examiners by or under ss 18-21: s 19. Provision may be made requiring a registered medical practitioner who attended the deceased before his death to provide a medical certificate of the cause of death: s 20. The Secretary of State may appoint a person as National Medical Examiner: s 21.

Chapter 3 (ss 22-24) Coroner areas, appointments etc

Section 22, Sch 2 make provision about coroner areas. Provision is also made about the appointment of senior coroners, area coroners and assistant coroners: s 23, Sch 3. Section 24 deals with the provision of staff and accommodation.

Chapter 4 (ss 25-31) Investigations concerning treasure

Section 25, Sch 4 make provision about the appointment of the Coroner for Treasure and Assistant Coroners for Treasure. The Coroner must conduct an investigation concerning an object in respect of which notification is given under the Treasure Act 1996 s 8(1): 2009 Act s 26. The Coroner for Treasure may, as part of an investigation under s 26, hold an inquest concerning the object in question: s 27. A determination must be made as to the outcome of investigations concerning treasure: s 28. Section 29 makes provision as to the exception to the duty to investigate. The Treasure Act 1996 s 8A, which concerns the duty to notify the coroner of the acquisition of certain objects, is added by the 2009 Act s 30. Section 31 s 31 makes provision for a code of practice under the Treasure Act 1996 s 11.

Chapter 5 (ss 32-34) Further provision to do with investigations and deaths

The 2009 Act s 32, Sch 5 make provision about powers of senior coroners and the Coroner for Treasure. Section 33, Sch 6 set out offences relating to jurors, witnesses and evidence. Section 34, Sch 7 provide details about allowances, fees and expenses.

Chapter 6 (ss 35-42) Governance etc

Under s 35, Sch 8, provision is made about the appointment of the Chief Coroner and Deputy Chief Coroners. The Chief Coroner must give the Lord Chancellor a report for each calendar year: s 36. The Chief Coroner may make regulations about the training of senior coroners, area coroners and assistant coroners, the Coroner for Treasure and Assistant Coroners for Treasure and coroners' officers and other staff: s 37. Section 38, Sch 9 make provision about the appointment of the Medical Adviser to the Chief Coroner and Deputy Medical Advisers to the Chief Coroner. It is the duty of inspectors of court administration appointed under the Courts Act 2003 s 58(1) to inspect and report to the Lord Chancellor on the operation of the coroner system: 2009 Act s 39. Section 40 concerns appeals to the Chief Coroner that may be made by an interested person. Section 41, Sch 10 make provision for an investigation into a person's death to be carried out by the Chief Coroner or the Coroner for Treasure or by a judge, former judge or former coroner. Pursuant to s 42, the Lord Chancellor may issue guidance about the way in which the coroner system is expected to operate in relation to interest persons.

Chapter 7 (ss 43-51) Supplementary

The Lord Chancellor may make regulations for regulating the practice and procedure at or in connection with investigations under ss 1-51, examinations under s 14 and exhumations under Sch 5 para 6: s 43. The Lord Chancellor may also make regulations for regulating the practice and procedure at or in connection with investigations concerning objects that are or may be treasure or treasure trove: s 44. Coroners rules may be made for regulating the practice and procedure at or in connection with inquests: s 45. The office of coroner of the Queen's household is abolished: s 46. Section 47 defines 'interested person' and s 48 provides general interpretation. Sections 49, 50, Sch 11 relate to Northern Ireland and Scotland. Section 51

amends the Access to Justice Act 1999 Sch 2 in relation to public funding for advocacy at certain inquests.

Part 2 (ss 52-73) Criminal offences

Chapter 1 (ss 52-61) Murder, infanticide and suicide

The 2009 Act s 52 substitutes the Homicide Act 1957 s 2 so that a person who kills or is a party to the killing of another is not to be convicted of murder if he was suffering from an abnormality of mental functioning which arose from a recognised medical condition, substantially impaired his ability to do certain specified things and provides an explanation for his acts and omissions in doing or being a party to the killing. The 2009 Act s 53 relates to Northern Ireland. Section 54 provides the partial defence to murder of loss of control. Section 55 gives the meaning of 'qualifying trigger'. The common law defence of provocation is abolished and replaced by ss 54, 55: s 56. Section 57 amends the Infanticide Act 1938 s 1. The 2009 Act s 58 relates to Northern Ireland. Section 59 provides that a person commits an offence if he does an act capable of encouraging or assisting the suicide or attempted suicide of another person and his act was intended to encourage or assist suicide or an attempt at suicide. Section 60 relates to Northern Ireland. Section 61, Sch 12 make special provision in relation to persons providing information society services.

Chapter 2 (ss 62-69) Images of children

It is an offence for a person to be in possession of a prohibited image of a child, however this does not apply to excluded images, an 'excluded image' being an image which forms part of a series of images contained in a recording of the whole or part of a classified work: ss 62, 63. Section 64 specifies defences and s 65 gives the meaning of 'image' and 'child'. Section 66 deals with penalties and s 67 with entry, search, seizure and forfeiture. Section 68, Sch 13 make special rules relating to providers of information society services. Section 69 amends the Protection of Children Act 1978 s 1A so as to include pseudo-photographs with photographs.

Chapter 3 (ss 70-73) Other offences

The 2009 Act s 70 amends the International Criminal Court Act 2001 in relation to genocide, crimes against humanity and war crimes. The 2009 Act s 71 provides that a person commits an offence if he holds another person in slavery or servitude and the circumstances are such that he knows or ought to know that the person is so held, or he requires another person to perform forced or compulsory labour and the circumstances are such that he knows or ought to know that the person is being required to perform such labour. Section 72 amends the Criminal Law Act 1977 s 1A in relation to conspiracy. The common law offences of sedition and seditious libel, defamatory libel and obscene libel are abolished: 2009 Act s 73.

Part 3 (ss 74-117) Criminal evidence, investigations and procedure

Chapter 1 (ss 74-85) Anonymity in investigations

Section 74 defines 'qualifying offences' for the purposes of ss 74-85. For the purpose of ss 74-85 a criminal investigation is a qualifying criminal investigation if it is conducted by an investigating authority wholly or in part with a view to ascertaining whether a person should be charged with a qualifying offence or whether a person charged with a qualifying offence is guilty of it: s 75. Section 76 defines 'investigation anonymity order'. Section 77 concerns applications for investigation anonymity orders made to a justice of the peace. Section 78 provides conditions for making the order. An appeal may be made against the refusal of an order: s 79. A justice of the peace may discharge an investigation anonymity order if it appears to the justice to be appropriate to do so: s 80. A chief officer of police of a police force in England and Wales may authorise a person to exercise the chief officer's functions under ss 74-

85: s 81. Section 82 provides that nothing in ss 74-85 affects the common law rules as to the withholding of information on the grounds of public interest immunity. Under s 83, the Secretary of State must review the operation of ss 74-85 and prepare a report of that review. Section 84 makes provision as to the application of ss 74-85 to the armed forces. Section 85 provides interpretation.

Chapter 2 (ss 86-97) Anonymity of witnesses

Section 86 defines 'witness anonymity order'. Under s 87, an application for a witness anonymity order to be made in relation to a witness in criminal proceedings may be made to the court by the prosecutor or the defendant. Section 88 provides the conditions for making a witness anonymity order. The relevant considerations for deciding whether Conditions A-C in s 88 are met are set out in s 89. Where, on a trial on indictment with a jury, any evidence has been given by a witness at a time when a witness anonymity order applied to the witness, the judge must give the jury such warning as the judge considers appropriate to ensure that the fact that the order was made in relation to the witness does not prejudice the defendant: s 90. A witness anonymity order may be discharged or varied: s 91. Section 92 deals with discharge or variation after proceedings. Discharge or variation of the order may be made by the appeal court: s 93. Special provisions apply in relation to service courts: see s 94. Nothing in ss 86-97 affects the common law rules as to the withholding of information on the grounds of public interest immunity: s 95. The Criminal Evidence (Witness Anonymity) Act 2008 ss 1-9, 14 cease to have effect: 2009 Act s 96. Section 97 provides interpretation.

Chapter 3 (ss 98-105) Vulnerable and intimidated witnesses

Section 98 amends the Youth Justice and Criminal Evidence Act 1999 ss 16, 21, 22 in relation to the age of child witnesses in the context of eligibility for special measures. The 2009 Act s 99, Sch 14 concern eligibility for special measures with regard to offences involving weapons. Section 100 amends the Youth Justice and Criminal Evidence Act 1999 s 21 with regard to special provisions relating to child witnesses. The 2009 Act s 101 makes special provisions relating to sexual offences. Section 102 concerns the presence of a supporter where evidence is given by live link. Section 103 concerns supplementary testimony where there is video recorded evidence in chief. Section 104 makes provision for the examination of the accused through an intermediary. Section 105 makes provision in relation to the age of a child complainant.

Chapter 4 (ss 106-110) Live links

Section 106 amends the Crime and Disorder Act 1998 s 57B so that directions may be given to attend through a live link. The 2009 Act 107 amends the Police and Criminal Evidence Act 1984 ss 46ZA, 46A in relation to answering to live link bail. The 2009 Act s 108 adds the 1984 Act s 54B so that a constable may search at any time any person who is at a police station to answer to live link bail and any article in the possession of such a person. The 2009 Act s 109 concerns the use of live link in certain enforcement hearings. Section 110 permits the power to give a live link direction for hearings in the Court of Appeal to be exercised by the registrar.

Chapter 5 (ss 111-117) Miscellaneous

Section 111 amends the Criminal Justice Act 2003 s 138 in relation to the effect of the admission of a video recording. The 2009 Act 112 concerns the admissibility of evidence of previous complaints. Section 113 sets out the powers in respect of offenders who assist investigations and prosecutions. Section 114 provides that if the defendant is charged with murder, the defendant may not be granted bail unless the court is of the opinion that there is no significant risk of the defendant committing, while on bail, an offence that would, or would be likely to, cause physical or mental injury to any person other than the defendant. A person charged with murder may not be granted bail except by order of a judge of the Crown Court: s 115. Section 116 amends the Administration of Justice (Miscellaneous Provisions) Act 1933 s 2

in relation to indictment of offenders. The 2009 Act makes provision in respect of the detention of persons under the Terrorism Act 2000 s 41.

Part 4 (ss 118-141) Sentencing

Chapter 1 (ss 118-136) Sentencing Council for England and Wales

The 2009 Act s 118, Sch 15 establish a Sentencing Council for England and Wales. The Council must, as soon as practicable after the end of each financial year, make to the Lord Chancellor a report on the exercise of the Council's functions during the year: s 119. 'Sentencing guidelines' means guidelines relating to the sentencing of offenders: s 120. Section 121 provides for sentencing ranges. Section 122 defines 'allocation guidelines'. Under s 123, provision is made for the preparation or revision of guidelines in urgent cases. The Lord Chancellor can propose to the Council that it prepare or revise its guidelines: s 124. Every court must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender's case, and must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so: s 125. Section 126 makes provision as to the determination of tariffs. Where the Council publishes draft guidelines under s 120 or s 122, or issues guidelines as definitive guidelines under s 120 or s 122, the Council must publish a resource assessment in respect of the guidelines: s 127. Under s 128, the Council must monitor the operation and effect of its sentencing guidelines. The Council may promote awareness of matters relating to the sentencing of offenders by courts in England and Wales: s 129. Section 130 provides that the annual report for a financial year must contain a sentencing factors report. The annual report for a financial year must contain a non-sentencing factors report: s 131. The Council's duty to assess the impact of policy and legislative proposals is dealt with in s 132. By s 133, the Lord Chancellor may provide the Council with such assistance as it requests in connection with the performance of its functions. Section 134 provides for the entrenchment of the Lord Chancellor's functions. The Sentencing Guidelines Council and the Sentencing Advisory Panel are abolished: s 135. Section 136 provides for interpretation.

Chapter 2 (ss 137-141) Other provisions relating to sentencing

Section 138, Sch 16 make provision about the extension of disqualification for holding or obtaining a driving licence in certain circumstances. Section 138 makes provision for certain terrorism offences. Section 139 concerns Northern Ireland. Section 140 makes provision with regard to appeals against certain confiscation orders. Section 141 concerns Northern Ireland.

Part 5 (ss 142-148) Miscellaneous criminal justice provisions

Section 142 modifies the status and functions of the Commissioner for Victims and Witnesses. Section 143 allows the implementation of the European Parliament and EC Council Directive 2000/31 on e-commerce and the European Parliament and EC Council Directive 2006/123 on services in the internal market. Section 144, Sch 17 contain amendments relating to the treatment of criminal convictions imposed by courts outside England and Wales. Section 145 deals with the transfer to the Parole Board of functions under the Criminal Justice Act 1991. The 2009 Act s 146 amends the Courts Act 2003 s 55 in relation to the retention of knives surrendered or seized. The 2009 Act s 147 relates to Northern Ireland. The Lord Chancellor may, by order, authorise or require the Lord Chancellor, or such other person as may be specified, to designate persons as security officers in relation to a specified description of tribunal buildings: s 148.

Part 6 (ss 149-154) Legal aid and other payments for legal services

Section 149 makes provision with regard to pilot schemes for Community Legal Service. Section 150 amends the Access to Justice Act 1999 Sch 2 with regard to the excluded service of help in connection with business matters. The 2009 Act s 151 extends the power to seek information from the Commissioners for Her Majesty's Revenue and Customs and the Secretary of State, which at present may be exercised for purposes relating to an individual's financial eligibility for legal aid services to cover purposes relating to an individual's liability to make contributions toward the cost of those services. Section 152, Sch 18 provide for the enforcement of an order to pay for the cost of representation. By virtue of s 153, secondary legislation made by the Lord Chancellor may include consequential, incidental supplementary, transitional, transitory and saving provisions. Section 154 provides for the regulation of damages-based agreements in respect of claims relating to employment matters.

Part 7 (ss 155-172) Criminal memoirs etc

A court may make an exploitation proceeds order in respect of a person if it is satisfied, on the balance of probabilities, that the person is a qualifying offender and has obtained exploitation proceeds from a relevant offence: s 155. Section 156 defines 'qualifying offender'. Section 157 makes further provision as to qualifying offenders in relation to service offences. Section 158 makes supplementary provision in relation to qualifying offenders. Section 159 defines 'relevant offence'. Section 160 sets out what amounts to 'deriving a benefit' for the purposes of s 155. A court may not make an exploitation proceeds order except on the application of an enforcement authority: s 161. Section 162 sets out a range of factors that the court must take into consideration when deciding whether to make an exploitation proceeds order in respect of any benefit and, if it makes an order, the recoverable amount to be specified in the order. Section 163 places a limit on the amount that the court can order a person to pay ('the recoverable amount'). The available amount is the total of the value of the respondent's relevant assets, to the extent that any benefits identified in the order are benefits secured for a person other than the respondent, the value of those benefits, and the value, at the time the exploitation proceeds order is made, of such relevant gifts, if any, as the court considering making the exploitation proceeds order considers it just and reasonable to take account of in determining the available amount: s 164. 'Property' is all property wherever situated and includes money, all forms of real, corporeal or personal property and things in action and other intangible or incorporeal property: s 165. Section 166 makes provision as to where the court has made an exploitation proceeds order and a conviction relevant to the order is quashed. Section 167 sets out the powers of the court on repeat applications. A court making an exploitation proceeds order may also make an additional proceeds reporting order in respect of the respondent: s 168. Section 169, Sch 19 extend the provisions relating to investigations to include exploitation proceeds investigations. Section 170 makes consequential changes to the functions of the Serious Organised Crime Agency. Section 171 has the effect that an application for an exploitation proceeds order may not be made more than six years after the enforcement authority's cause of action accrued. Section 172 provides interpretation.

Part 8 (ss 173-175) Data Protection Act 1998

Section 173 provides so that the Commissioner may serve a data controller with a notice for the purpose of enabling the Commissioner to determine whether the data controller has complied or is complying with the data protection principles. Section 174 amends the Data Protection Act 1998 s 52 so that the Commissioner must prepare a code of practice which contains practical guidance in relation to the sharing of personal data in accordance with the requirements of the 1998 Act and such other guidance as the Commissioner considers appropriate to promote good practice in the sharing of personal data. The 2009 Act s 175, Sch 20 contain further amendments of the Data Protection Act 1998.

Part 9 (ss 176-183) General

Orders or regulations made by the Secretary of State, the Lord Chancellor, the Welsh Ministers or the Chief Coroner under the 2009 Act are to be made by statutory instrument: s 176. Section 177, Schs 21, 22 make consequential amendments and transitional and saving provisions. Section 178, Sch 23 contain repeals. Section 179 deals with financial provision. Section 180 makes provision as to the effect of amendments to provisions applied for purposes of service law. Sections 181-183 deal with extent, commencement and short title.

Amendments, repeals and revocations

Subscribers should note that the lists below mention repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. Please also note that these lists are not exhaustive.

Specific provisions of a number of Acts are added, amended or repealed. These include: Infanticide Act 1938 s 1; Homicide Act 1957 s 2; Suicide Act 1961 ss 2-2B; Criminal Appeal Act 1968 ss 11, 11A; Criminal Law Act 1977 s 1A; Limitation Act 1980 s 27C; Police and Criminal Evidence Act 1984 ss 54B, 54C; Treasure Act 1996 s 8A; Data Protection Act 1998 s 52A-52E; Crime and Disorder Act 1998 s 57B, 57C, 57F; Access to Justice Act 1999 ss 17, 17A, Sch 2; Youth Justice and Criminal Evidence Act 1999 ss 16, 21, 22, 22A, 24, 27, 33BA, 33BB, 35; International Criminal Court Act 2001 ss 53, 60, 65A, 65B, 67A; Police Reform Act 2002 s 51; Criminal Justice Act 2003 s 138, Sch 15; Domestic Violence, Crime and Victims Act 2004 ss 48-50.

Halsbury's Laws of England/STOP PRESS/DRIVING INSTRUCTION (SUSPENSION AND EXEMPTION POWERS) ACT 2009

DRIVING INSTRUCTION (SUSPENSION AND EXEMPTION POWERS) ACT 2009

The Driving Instruction (Suspension and Exemption Powers) Act 2009 provides for the suspension in certain circumstances of registration and licences relating to the provision of driving instruction, and makes provision about exemptions from prohibitions concerning registration (including provision about suspension) and about compensation in connection with suspension. The Act received royal assent on 12 November 2009 and ss 5 and 6 came into force on that day. The remaining provisions come into force on a day or days to be appointed. For details of commencement, see the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet.

Sections 1-3 amend the Road Traffic Act 1998. Provision is made by the 2009 Act s 1 for the suspension of a person's registration to give driving instruction, where the registrar is considering either terminating the person's registration, or where the registrar has already so decided, and he believes such person presents a significant threat to the safety of members of the public. By virtue of s 2, the Secretary of State must make a scheme for the making of compensation payments in respect of suspension. Provision is made by s 3 for exemptions from prohibitions concerning registration. Section 4, Sch 1 make transitory amendments to the existing registration regime. Consequential provision is made by s 5 and transitional,

transitory and saving provisions are made by s 6. Section 7 deals with short title, commencement and extent.

Amendments, repeals and revocations

Subscribers should note that the list below mentions repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. This information may also be found in the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet. Please also note that the list is not exhaustive.

Specific provisions of a number of Acts are added, amended or repealed. These include: Road Traffic Act 1998 ss 128(7A)-(7G), 128ZA, 128ZB, 129(9), 130(7)-(13), 131A; Road Traffic Offenders Act 1998 s 18(1).

Halsbury's Laws of England/STOP PRESS/EDUCATION AND INSPECTIONS ACT 2006

EDUCATION AND INSPECTIONS ACT 2006

The Education and Inspections Act 2006 makes provision in relation to primary, secondary and further education and training, and food or drink provided on school premises or in connection with the provision of education or childcare; provides for the establishment of an Office for Standards in Education, Children's Services and Skills and the appointment of Her Majesty's Chief Inspector of Education, Children's Services and Skills; makes provision for the functions of the Office and Chief Inspector; amends the Leasehold Reform Act 1967 s 29 in relation to university bodies; and makes provision for connected purposes. The Act received the royal assent on 8 November 2006 and the following provisions came into force on that day ss 86, 87, 109, 111, Pt 8 (in part), 161, 180, 181-183, 184 (in part), 185-191, Sch 16, Sch 18 (in part). Sections 112 (in part), 116 (in part), 117, 158 (in part), 159, 184 (in part), Sch 11 (in part), Sch 15 (in part) came into force on 12 December 2006: SI 2006/2990 (amended by SI 2008/54). The 2006 Act s 40, Sch 18 (in part) came into force in relation to England on 12 December 2006: SI 2006/2990 (amended by SI 2008/54). The 2006 Act ss 43, 45, 48-51, 54 (in part), 163, 173, 184 (in part), Sch 18 (in part) came into force on 8 January 2007: SI 2006/3400. The 2006 Act ss 5, 57, 184 (in part), Schs 5, 18 (in part) came into force on 8 February 2007: SI 2006/3400. The 2006 Act ss 4, 39, 41, 42, 44, 46, 47, 53, 184 (in part), Sch 18 (in part) came into force in relation to England on 27 February 2007: SI 2006/3400. The 2006 Act s 160 came into force on 28 March 2007 in relation to England: SI 2007/93. The 2006 Act ss 5 (in part), 18 (in part), 21-24, 25 (in part), 26, 27 (in part), 31, 32, 33 (in part), 35 (in part), 59-73, 74 (in part), 76, 77 (in part), 78-80, 83, 84 (in part), 85 (in part), 88-96, 112 (in part), 113-115, 116 (in part), 118-153, 155, 157, 158 (in part), 165, 166, 176, 184 (in part), Schs 2 (in part), 6, 7, 9, 10 (in part), 11-14, 15, 18 (in part) came into force on 1 April 2007: SI 2007/935. The 2006 Act ss 1-3, 7-17, 18 (in part), 19, 20, 25 (in part), 27 (in part), 28-30, 33-36, 38, 54, 56, 184 (in part), Schs 2 (in part), 3, 4, 18 (in part) came into force on 25 May 2007: SI 2007/935 (amended by SI 2007/1271). The 2006 Act s 55 (in part) came into force in relation to England on 25 June 2007: SI 2007/1801. The 2006 Act ss 5 (in part), 77 (in part), 82, 84 (in part), 85 (in part), 100, 101, 103-107, 109 (in part), 110, 184 (in part), Schs 8 (in part), 10 (in part), 18 (in part) and, in relation to England only, ss 38 (in part), 55 (in part), 97-99, 102, 108, 167, 184 (in part), and Sch 18 (in part) came into force on 1 September 2007: SI 2007/1801. The 2006 Act s 5 (in part) came into force on 1 January 2008 and 1 April 2008: SI 2007/3074. The 2006 Act ss 156, 175, 184 (in part), Schs 17, 18 (in part) and, in relation to Wales, ss 1, 37 (in part), 39, 43-45, 47, 53, 166, and Sch 18 (in part) came into force on 30 June 2008: SI 2008/1429. The 2006 Act ss 4, 38, 40,

77 (in part), 154, 184 (in part), Schs 8 and 18 (in part), in relation to Wales, and, in relation to England, s 37, came into force on 1 September 2008: SI 2008/1429, SI 2008/1971. The 2006 Act s 55 came into force on 9 February 2009 in relation to Wales: SI 2009/49. The 2006 Act ss 4, 164, 184 (in part) and Sch 18 (in part) came into force on 1 September 2009: SI 2009/1027. The 2006 Act ss 169-171 came into force on 12 October 2009, and ss 89 (in part), 96 (in part), 184 (in part) and Sch 18 (in part) came into force on 1 January 2010: SI 2009/2545. In relation to Wales, the 2006 Act s 57 (in part), Sch 5 paras 3-5 came into force for certain purposes on 15 March 2010, and Sch 5 (so far as not already in force) and Sch 18 (in part) came into force on 2 April 2010: SI 2010/736. The remaining provisions come into force on a day or days to be appointed.

Part 1 (ss 1-6) Education functions of local authorities

Section 1 places a general duty on local education authorities to promote high standards and requires them to exercise their functions with a view to promoting the fulfilment by every child of his educational potential. Local education authorities are required to exercise their functions on the provision of schools in their area with a view to securing diversity and increasing opportunities for parental choice: s 2. Local education authorities in England are required, under s 3, to respond to parental representations in relation to the exercise of the provision of primary and secondary schools. Section 4 requires all local education authorities to make arrangements to enable them to establish, so far as it is possible, the identities of children in their area who are not receiving a suitable education, with regard to statutory guidance. Local education authorities in England are required under s 5 to appoint school improvement partners to each of the maintained schools, excluding maintained nursery schools, in their area, who will act on behalf of the local education authority, providing challenge and support to a school in order to help improve the attainment and outcomes of pupils. Local education authorities have a duty to promote the well-being of persons aged 13-19, and of persons aged up to 25 with learning difficulties, by securing access for them to sufficient educational and recreational leisure-time activities and facilities, so far as is reasonably practicable, by providing activities and facilities, assisting others to do so, or by making other arrangements to facilitate access, which can include the provision of transport, financial assistance or information, and must supply and keep up to date information regarding those leisure-time activities and facilities that are available locally: s 6, Sch 1.

Part 2 (ss 7-32) Establishment, discontinuance or alteration of schools

Section 7 provides that a local education authority in England may publish a notice inviting proposals, other than from local education authorities, for the establishment of a new foundation, voluntary, or foundation special school, or Academy. Provision is made in relation to such proposals: Sch 2. The circumstances in which local education authorities are permitted to publish proposals for a community school or community special school are set out in s 8, and in general such proposals may be published only where prescribed conditions are met and only, subject to certain conditions, with the consent of the Secretary of State. Before publishing a notice local education authorities in England must consult such persons as they consider appropriate, and in discharging this duty they must have regard to any guidance given by the Secretary of State and regulations may require local education authorities to take further steps to promote public awareness of the proposals brought forward: s 9. Section 10 provides for the publishing of proposals with the consent of the Secretary of State for a new community, foundation, community special or foundation special school by local education authorities in England and other persons ('proposers'). Provision is made for local education authorities to publish proposals to establish a new maintained nursery school or a new 16-19 foundation school or foundation special school and for proposers to publish proposals to establish a new foundation school, voluntary school or foundation special school which is a 16-19 school, or is

to replace an independent school, and for a new foundation special school to replace a non-maintained special school: s 11. Under s 12 a new maintained school may be a member of a federation from the outset. Regulations may be made where a school is proposed to be situated in an area different from that of the local education authority who published a notice or, if the proposals are published outside a competition, different from that of the local education authority who it is proposed should maintain the school: s 13. By virtue of s 14, the power of a local education authority to establish and maintain a school within the area of another local education authority does not apply if the other local education authority is situated in Wales. Provision is made for the publication of statutory proposals where a local education authority or school governing body wish to close a maintained school in England, including maintained mainstream schools, special schools and nursery schools: s 15, Sch 2. Consultation is provided for under s 16 where the local education authority or the governing body propose to close a rural primary school or special school. Section 17 provides for the Secretary of State to direct a local education authority to discontinue a community or foundation special school on a date specified in the direction if he considers it expedient to do so in the interests of the health, safety or welfare of pupils at a school, and requires a local education authority to discontinue a school on the specific date given and provides that there is no requirement to publish statutory proposals for the school's closure. Provision is made under ss 18, 19 that where a local education authority or the governing body of a maintained school propose to make a prescribed alteration to a maintained school, and the proposals are ones that these bodies respectively may make, they must publish statutory proposals to do so, and that regulations may prescribe the alterations to maintained schools that require the publication of statutory proposals. Section 20 provides that certain schools may only publish certain proposals with the consent of the school's existing trustees, and of anyone by whom the foundation governors are appointed. Regulations may make provision about the publication and determination of such proposals: s 21. Such regulations in relation to proposals by a governing body of a community or voluntary controlled school to change category to a foundation school, must provide, under s 22, for the proposals to be determined by the governing body, and not be referred to the adjudicator, subject to certain conditions, and similar provision is made in respect of proposals for a change of category from community special school to foundation special school. Regulations made in relation to the publication and determination of proposals must make provision in connection with the referral of certain proposals to the adjudicator in certain circumstances: s 23. Regulations may, under s 24, make provision in connection with the implementation of approved proposals for the alteration of schools, including arrangements under which the duty to implement the proposals may be removed, or the proposals modified. Section 25 provides for the governing bodies of certain foundation schools with foundations to publish proposals to remove the foundation or to reduce the proportion of governors appointed by the foundation, while s 26 provides for procedure, and s 27 for implementation of such proposals. The opening or closing of maintained schools, or the making of prescribed alterations to them is prohibited without the publication and determination of statutory proposals: s 28. Under s 29, school organisation committees are abolished. Section 30 introduces Sch 3, which provides for amendments to legislation and reflects the replacement of the school organisation committee as decision maker by the local education authority, while s 31 provides for transitional provision and s 32 for interpretation.

Part 3 (ss 33-58) Further provisions about maintained schools

Section 33 provides for the foundations of certain foundation and foundation special schools, and the charity trustees of those foundations, to have specified characteristics and gives the Secretary of State the power in certain circumstances to remove and appoints charity trustees. Provision is made under s 34 for the requirement of the governing body of foundation schools in England with a foundation which appoint the majority of governors to the school's governing body to establish a parent council. The definition of 'capital expenditure' is modified to ensure that it reflects modern accounting practice and that optimal procurement arrangements are

available to voluntary aided schools. Section 36 introduces Sch 4 which makes provision in relation to the disposal and change of use of land by maintained schools. Head teachers at foundation and voluntary controlled schools with a religious character are enabled to be teachers who are appointed specifically to teach religious education in accordance with the tenets of the school's designated religion: s 37. By virtue of s 38, the governing body of a maintained school has the duty to (1) promote the well-being of pupils at the school when discharging their functions relating to the conduct of the school; (2) promote community cohesion when discharging their functions relating to the conduct of the school; (3) have regard to any relevant Children and Young People's Plan in exercising their functions in relation to the conduct of the school; and (4) in relation to England, have regard to any views expressed by parents of registered pupils. Section 39 provides for the prohibition on selection on the basis of a pupil's ability in any maintained school, subject to certain exceptions. The status of school admissions code of practice is strengthened under s 40. In relation to England, the functions and role of admission forums are extended: s 41. Local education authorities, in relation to England, are required under s 42 to provide advice and assistance to parents of children living in the area of the authority to help them in the formulation of their preference on a school for their child. Section 43 makes provision in relation to the duty of community and voluntary controlled schools in England to comply with any decision made by their local authority to admit a child, if it is the school's admission authority. Interviewing as part of the admission process, subject to certain conditions, is prohibited in any maintained school: s 44. By virtue of s 45, foundation and voluntary aided schools, designated by order as having a religious character, are required to consult a named body or person, to be prescribed by regulations, about their proposed admission arrangements. Section 46 makes provision in relation to the restriction of the alteration of admission arrangements in maintained schools in England. Provision is made in relation to objections to admission arrangements for maintained schools to be referred to the relevant authority: s 47. Local education authorities are required under s 48 to notify the governing body of a community or voluntary controlled school that a decision has been made to admit a looked after child who has been permanently excluded from two or more schools, and on receipt the governing body has seven days to refer the matter to the adjudicator where the admission of the child would cause serious prejudice to the provision of efficient education, or the efficient use of resources. Section 49 provides that, in relation to England, where a local authority directs a governing body for which they are not the admission authority to admit a child, where the child has been refused admission to or excluded from every school within a reasonable travelling distance, the governing body can refer the matter to the adjudicator. Provision is made in relation England for local authorities to direct an admission authority to admit a looked after child to a specified school: ss 50, 51. By virtue of s 52, the National Assembly for Wales has the power to make regulations about the admission of children looked after by local authorities in Wales to maintained schools in Wales. Section 53 provides that where a school with partially selective admission arrangements, which it would not now be lawful to introduce, has reduced the proportion of intake selected, it may not subsequently increase that proportion. Provision is made under s 54 for additional forms of banding to assess children's ability when applying for a place at school. Section 55 provides for a sixth-form pupil attending a maintained school to be able to withdraw himself from collective worship and, in the case of a non sixth-form pupil, that a parent may request that the pupil be excused. Regulations may prescribe the circumstances under which charges can be made for singing and musical instrument tuition: s 56. Section 57 introduces Sch 5, which contains provisions relating to the duties and powers of local education authorities in relation to the financing of maintained schools and the role of schools forums. In relation to England, the requirement for the Secretary of State to issue a code of practice on relationships between local education authorities and schools maintained by them is removed: s 58.

Part 4 (ss 59-73) Schools causing concern: England

Section 59 provides for definitions of 'maintained school' and 'eligible for intervention'. Provision is made under s 60 as to the legal procedure where local education authorities may issue formal warning notices to schools. A maintained school is eligible for intervention if, following an inspection Her Majesty's Chief Inspector of Education, Children's Services and Skills has given a notice that the school requires significant improvement and, where there is a further inspection, a school is only eligible for intervention if, following the inspection, the notice to the Secretary of State has not been superseded by either a report that the school no longer requires significant improvement or an additional notice to the Secretary of State that the school requires special measures: s 61. Under s 62, a maintained school is eligible for intervention if, following an inspection the Chief Inspector has given a notice that the school requires special measures and, where there is a further inspection, a school is only eligible for intervention if, following the inspection, the notice to the Secretary of State has not been superseded by either a report that the school no longer requires special measures. Sections 63-66 provide for local education authorities' powers in relation to maintained schools subject to intervention or special measures and ss 67-69 provide for the powers of the Secretary of State in relation to maintained schools subject to intervention or special measures. Section 70 introduces Sch 6, which provides for various matters relating to Interim Executive Boards appointed by the local education authority or the Secretary of State, and s 71 introduces Sch 7, which makes provision in relation to measures that need to be taken by a local education authority following the receipt of an inspection report stating that a school requires special measures or significant improvement. Local education authorities are required to have regard to guidance issued by the Secretary of State in relation to their discretionary powers: s 72. Section 73 provides for interpretation.

Part 5 (ss 74-75) Curriculum and entitlements

Section 74 provides for two new entitlements to the key stage 4 curriculum for pupils aged between 14 and 16 and s 75 provides for two new entitlements for young people who are over compulsory school age but who are not yet 19 years old.

Part 6 (ss 76-87) School travel and school food

Section 76 places a general duty on local education authorities in England to assess the school travel needs of their area, and to promote the use of sustainable modes of travel. Provision is made under s 77 and Sch 8 in relation to local education authorities in England's duty relating to travel arrangements for children. Section 78, Sch 9 make provision in relation to school travel schemes made by local education authorities in England covering home to school travel arrangements for pupils of compulsory school age or below. Such schemes must be piloted in accordance with regulations made by the Secretary of State: s 79. Under s 80 the Secretary of State is required to prepare and publish an evaluation of schemes before 1 January 2012 and he has the power to provide by order that the new provisions will cease to have effect. Provision is made in relation to adults who benefit from transport arrangements made by local education authorities: s 81. Section 82 clarifies the defences available to parents facing a prosecution by a local education authority for their child's non-attendance at school. Greater responsibility is transferred from the Secretary of State to the Learning and Skills Council for England in relation to the provision of transport by local education authorities and their partners for 16-19 year olds: s 83. Under s 84 local education authorities are required to have regard to the religion or belief of parents in exercising their travel functions. Section 85 and Sch 10 make provision for consequential amendments. The powers to make regulations in connection with nutritional standards for school lunches are extended to cover all food and drink provided on the premises of maintained schools, and apply to food or drink provided by a local education authority or governing body of a school to registered pupils at any place other

than the school: s 86. Under s 87, local education authorities and governing bodies no longer have a duty to charge for food and drink provided by them.

Part 7 (ss 88-111) Discipline, behaviour and exclusion

Chapter 1 (ss 88-96) School Discipline

Section 88 defines the responsibilities of the governing body for establishing the principles shaping a school's behaviour policy and s 89 defines the responsibilities of the head teacher for establishing and maintaining a behaviour policy for the school that promotes self-discipline, respect for others and proper regard for authority. 'Disciplinary penalty' is defined as a penalty imposed on a pupil by any school at which education is provided for him, where his conduct falls below the standard which could reasonably be expected of him: s 90. Provision is made under s 91 for the conditions that make lawful the imposition of a disciplinary penalty on a pupil at any school at which education is provided for him. Section 92 specifies the conditions that make the detention of a pupil outside school sessions lawful. A member of staff is enabled to use reasonable force to prevent a pupil from committing an offence, causing personal injury, damaging property or doing something that prejudices discipline at the school: s 93. By virtue of s 94, staff are protected against civil or criminal liability where a lawfully confiscated item is retained or disposed of. Section 95 provides for interpretation, and s 96 for consequential amendment.

Chapter 2 (ss 97-111) Parental responsibility and excluded pupils

Section 97 provides for voluntary parenting contracts between schools and local education authorities and parents to be used in cases of misbehaviour where the pupil has not been excluded. Parenting orders can be applied for by schools and in cases where a pupil has seriously misbehaved but not been excluded: s 98. Further provision is made under s 99 in relation to parenting contracts and parenting orders. Section 100 imposes a duty for schools to provide suitable full-time education to temporarily excluded pupils. Local education authorities are required to provide permanently excluded pupils with suitable full-time education: s 101. Under s 102 the Secretary of State, and the National Assembly may make regulations specifying the circumstances in which maintained schools, Academies, city technology colleges and city colleges for the technology of the arts must arrange reintegration interviews with the parents of temporarily excluded pupils, and the procedures and time limits connected with such an interview. Section 103 provides that it is an offence for a parent to fail to ensure that when their child is excluded, that the excluded pupil is not present in a public place during normal school hours on a day which is one of the first five school days to which the exclusion relates and is specified. Provision is made as to the notice the parent will receive from the school when their child is excluded: s 104. By virtue of s 105, a penalty notice may be given to a parent who appears to be guilty of an offence of failing to ensure their excluded child is not present in a public place. Section 106 provides for the Secretary of State to make regulations about the administration of penalty notices. Police Community Support Officers will be able to issue fixed penalty notices to parents of excluded pupils found in a public place during the first five days of exclusion: s 107. By virtue of s 108 police can remove excluded pupils from a public place to a designated place. Section 109 makes provision in relation to defences to offences that may be committed by a parent whose child fails to regularly attend a school at which he is a registered pupil. Local education authorities may use receipts from penalty notices for any of their functions specified in regulations, but any sums not so used must be paid to the Secretary of State. Definitions are provided for under s 111.

Part 8 (ss 112-159) Inspection and review of local authorities in England

Chapter 1 (ss 112-121) The Office and the Chief Inspector

Sections 112-121, Schs 11, 12 provide for the establishment and functions of the Office for Standards in Education, Children's Services and Skills and a new office of the Chief Inspector of Education, Children Services and Skills, Her Majesty's Inspectors of Education, Children's Services and Skills, the Children's Rights Director, and an annual report by the Chief Inspector to be provided for the Secretary of State.

Chapter 2 (ss 122) General Transfer of Functions

Section 122 provides for the general transfer to the Chief Inspector all functions of the existing Her Majesty's Chief Inspector of Schools in England, including inspections of schools, the inspection and regulation of child minding, day care and nursery education, inspection of independent schools and inspection of teacher training provision.

Chapter 3 (ss 123-134) Inspection of further education and training etc

Sections 123-133 provide for the inspection of further education colleges and other education and training providers, and for area inspections, which are concerned with the provision of education or training, in a specified area in England, for persons who are aged 15 or over but under 19. The Adult Learning Inspectorate is abolished as all of its inspection functions will in future be performed by the Chief Inspector: s 134.

Chapter 4 (ss 135-142) Inspection and review of local authorities in England

Sections 135-142 make provision for the Chief Inspector to undertake inspections and annual reviews of the performance of local authorities' functions, and sets out which of those functions are within the Chief Inspector's remit for these purposes.

Chapter 5 (ss 143-145) Inspection of CAFCASS functions

Sections 143-145 provide for powers of the Chief Inspector and that it is a duty for the Chief Inspector to inspect the performance of the Children and Family Court Advisory and Support Service ('CAFCASS') and is required to produce a written report of any inspection and send copies to the Secretary of State and CAFCASS.

Chapter 6 (ss 146-153) Further provision relating to the functions of Chief Inspector

Section 146 makes provision for the Secretary of State and the Chief Inspector to make arrangements for the inspection of secure training centres. The Secretary of State has the power to make regulations requiring the Chief Inspector to inspect adoption and fostering functions of a local authority on such occasions or at such intervals as the regulations specify: s 147. Functions of the Commission for Social Care Inspection as to the registration of children's homes, residential family centres, fostering agencies, voluntary adoption agencies, and adoption support agencies, are to be transferred, under s 148, to the Chief Inspector. Section 149, Sch 13 provide for the interaction between the Chief Inspector and other authorities. Any person who is authorised to exercise a power of entry or inspection on behalf of the Chief Inspector must, if required to do so, produce evidence of his authority to exercise the power: s 150. For the purposes of the law of defamation, under s 151, a report made by the Chief Inspector is privileged unless shown to have been made with malice. By virtue of s 152, the Chief Inspector may combine the reports of inspections carried out under two or more of his inspection functions, and to produce them as a combined report. Section 153 enables information obtained in connection with one of the Chief Inspector's functions to be used in connection with any other of his functions.

Chapter 7 (ss 154-159) Miscellaneous and supplementary

Section 154 provides new elements covering community cohesion which must be covered by inspection reports for schools. The Secretary of State may make regulations requiring a local authority in England to pay a fee to the Office in respect of its relevant functions and the Chief Inspector may make a scheme setting the fee level for periods when no regulations made by the Secretary of State are in force: s 155. Under s 156, the Chief Inspector no longer has the

duty to inspect and report on the carrying out of the functions of the National Assembly in respect of family proceedings. Section 157 introduces Sch 14 which provides for minor and consequential amendments, and s 158 introduces Sch 15 which provides for transitional provision, while s 159 provides for interpretation.

Part 9 (ss 160-177) Miscellaneous

Section 160 makes provision in relation to the Chief Inspector's power to investigate complaints made by parents about schools. Provision is made in relation to innovation orders made by the Secretary of State or National Assembly: s 161, Sch 16. Under s 162 the Secretary of State and National Assembly, subject to specified conditions, have the power to repeal references in primary and secondary legislation to the terms 'local education authority' and 'children's services authority'. Section 163 makes provision in relation to the advice on such matters relating to the admission of pupils to relevant schools that an adjudicator is required to provide on request by the Secretary of State. The Department for Education and Skills is enabled to collect individual information about children receiving education funded by the local education authority otherwise than at a school: s 164. Members of staff, under s 165, have the power to use reasonable force in order to prevent a student at the institution from committing an offence, causing personal injury, damaging property or doing something that prejudices discipline at the institution. Section 166 provides for regulations that enable the governing bodies of maintained schools to make collaboration arrangements with further education bodies, and further education bodies to make collaboration arrangements with schools and with other further education bodies. Local authorities and governing bodies of maintained nursery schools must have regard to guidance issued by the Secretary of State about consultation with pupils on decisions affecting them: s167. Under s 168, the Secretary of State or the National Assembly may issue a direction or make an order if the governing bodies of maintained nursery schools are unreasonably exercising, or are in default with regard to, their functions. Sections 169-171 make provision in relation to the prohibition or restriction of unsuitable persons from taking part in the management of independent schools. Provision is made in relation to offences committed in connection with independent schools: s 172. By virtue of s 173, the governing bodies of community, foundation or voluntary schools, as well as maintained nursery schools, have a duty to designate a member of the school staff as the person responsible for co-ordinating provision for children with special educational needs at the school, and the Secretary of State has the power to make regulations requiring governing bodies to ensure the special educational needs co-ordinators have certain experience or qualifications or both, and to confer other functions on these governing bodies relating to special educational needs co-ordinators. Section 174 makes further provision about the circumstances in which regulations may prescribe time-limits within which local education authorities must take certain steps in connection with assessments and statements of special educational needs. Provision is made for minor amendments relating to schools in Wales: s 175, Sch 17. The Learning and Skills Council, under s 175, has a power to manage and fund particular types of support for learners aged between 10 and 15, for the purpose of encouraging them to undergo education and training. Section 177 enables university bodies who are landlords, on the acquisition of the freehold by, or the granting of an extended lease to, a tenant, to impose with the consent of the Secretary of State or the National Assembly, restrictive covenants on tenants for the purpose of reserving the relevant land for possible development by that body or a related university body.

Part 10 (ss 178-191) General

Sections 178-180 makes provision in relation to the powers and functions of the National Assembly. General provision is made under s 181 for orders and regulations, under s182 for Parliamentary control of orders and regulations, under s 183 for consequential and transitional

provisions, s 184 and Sch 18 for repeals, s 185 for financial provisions, s 186 for abbreviations of Acts, s 187 for interpretation, ss 188, 189 for commencement, s 190 for extent, and s 191 for short title.

Amendments, repeals and revocations

Subscribers should note that the list below mentions repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. This information may also be found in the COMMENCEMENT OF STATUTES table in the *Current Service* Noter-up booklet. Please also note that this list is not exhaustive.

Specific provisions of a number of Acts are amended or repealed. These include: Local Government Act 1972 s 177(1A)(b); Local Government Act 1974 s 25(5)(a); Children Act 1989 ss 26ZA, 79R(4); Employment Act 1989 s 26; Higher Education Act 1992 s 85C; Education Act 1996 ss 13A, 14(3A), 14A, 436A, 507A, 507B, 508A-508F, 509AD, 537B, 550A, 550B, 444; Education Act 1997 ss 4, 5; School Standards and Framework Act 1998 ss 15(7), 23A, 23B, 24, 27, 28, 28A, 31, 47A(6), 58(4), 61, 88A, 89D, 90(6), (7), (10), 90A, 95A-97D, 99(1), 114A, 127(5), (6), Sch 4; Care Standards Act 2000 s 45(4); Learning and Skills Act 2000 ss 3A-3D, 11A, 52-72, 90, 151(2), Schs 6, 10 Pt 3; Education Act 2002 s 2(7), (8), 85, 85A, 159(3), 162A(4), 162B(8), 167A-167D, 168A-168C, 178(3); Anti-social Behaviour Act 2003 s 21(4), 22A; Courts Act 2003 s 58(6); Health and Social Care (Community Health and Standards) Act 2003 ss 77(3), 79(7), 80(5), 110, 112, 116(1); Children Act 2004 ss 24, 38; Education Act 2005 ss 1-4, 11A-11C, 64-67, 69(a), 73, Schs 1, 10, 11; Childcare Act 2006 ss 14, 31, 50(4), 61(4), 80, 81.

Halsbury's Laws of England/STOP PRESS/ENERGY ACT 2008

ENERGY ACT 2008

The Energy Act 2008 makes provision relating to gas importation and storage, the generation of electricity from renewable and low-carbon sources, the decommissioning of energy installations and wells, the management and disposal of waste produced during the operation of nuclear installations, petroleum licences and third party access to oil and gas infrastructure, modifications of pipelines, payments in respect of the renewable generation of heat, gas and electricity meters and electricity safety, and the security of equipment, software and information relating to nuclear matters. The Act received the royal assent on 26 November 2008 and the following provisions came into force on that day: ss 37 (in part), 38 (in part), 88-91, 102, 104 (in part), 105 (in part), 106, 107 (in part), 110-113, Sch 5 (in part). Sections 38 (in part), 39, 40-43, 72-77, 83, 87, 94, 97, 98, 100, 101, 103, 104 (in part), 105 (in part), 107 (in part), 108 (in part), 109, Schs 3, 4, 5 (in part), 6 (in part) came into force on 26 January 2009: SI 2009/45. Sections 37 (in part), 92, 93, 95, 96, 107(1) (in part), 108 (in part), Schs 5 (in part), 6 (in part) came into force on 1 April 2009: SI 2009/45. Sections 1, 17-35, 36 (in part), 45-71, 78-82, 107 (in part), 108 (in part), Schs 1 (in part), 5 (in part), 6 (in part) come into force on 6 April 2009: SI 2009/45. The remaining provisions come into force on a day or days to be appointed. For details of commencement see the COMMENCEMENT OF STATUTES table in the *Current Service* Noter-up booklet.

Part 1 (ss 1-36) Gas importation and storage

Chapter 1 (s 1) Gas importation and storage zones

Section 1 provides for ownership of the rights under the United Nations Convention on the Law of the Sea 1982 in the exclusive economic zone outside the United Kingdom's territorial sea, in relation to the unloading and storage of gas, to be vested in the Crown and allows Her Majesty to designate an area within which those rights are exercisable.

Chapter 2 (ss 2-16) Gas importation and storage zones

Section 2 prohibits specified activities relating to the recovery, unloading and storage of gas from being carried on except in accordance with a licence. However, such a licence is not required for certain activities which relate to developments which are liable to be subject to planning control: s 3. Under s 4, the Secretary of State may grant licences in respect of the specified activities referred to in s 2. The Secretary of State may, under s 5, make regulations relating to the making of applications for licences. Section 6 enables the Secretary of State to determine the terms and conditions of a licence and s 7 provides for the Secretary of State to make regulations prescribing model clauses for licences. By virtue of s 8, it is an offence to carry on any of the activities listed in s 2 and not excepted by s 3 without an appropriate licence. Section 9 provides that it is an offence for a licence holder to breach certain of provisions of the licence. Where there has been a breach of a licence, the Secretary of State may direct that the licence holder takes appropriate steps to remedy the breach: s 10. Failure to comply with such a direction is an offence: s 11. Section 12 allows the Secretary of State to apply to the High Court for an injunction to restrain the carrying on of activities other than in accordance with a licence. The Secretary of State may appoint inspectors to assist in carrying out the Secretary of State's functions and provide for their remuneration: s 13. By virtue of s 14, offences may be prosecuted in any part of the United Kingdom, irrespective of where they were committed. In respect of a licence for the recovery of gas in a controlled place, s 15 makes provision to allow the Secretary of State give a direction, where satisfied that the amount of petroleum present is insignificant, to the effect that the holder of a gas storage licence does not also need a petroleum licence. Section 16 provides for interpretation.

Chapter 3 (ss 17-35) Storage of carbon dioxide

Section 17 prohibits specified activities relating to the storage of carbon dioxide with a view to its permanent disposal from being carried on except in accordance with a licence. Under s 18, the Secretary of State may grant licences in respect of the specified activities referred to in s 17. The Secretary of State is empowered by s 19 to make regulations prescribing the conditions that the applicant may be required to meet in order to obtain a licence and other requirements which must be met before a licence is granted. Subject to regulations on the terms and conditions of licence, the Secretary of State may grant licences on such terms and conditions as are considered appropriate: ss 20, 21. By s 22, it is an offence for a person to carry on any of the activities listed in s 17 without an appropriate licence, and by 23, it is an offence for a licence holder to breach certain of provisions of the licence. Where there has been a breach of a licence, the Secretary of State may direct that the licence holder takes appropriate steps to remedy the breach (s 24), and failure to comply with such a direction is an offence (s 25). Section 26 allows the Secretary of State to apply to the High Court for an injunction to restrain the carrying on of activities other than in accordance with a licence. The Secretary of State may appoint inspectors to assist in carrying out the Secretary of State's functions and provide for their remuneration: s 27. By virtue of s 28, offences may be prosecuted in any part of the United Kingdom, irrespective of where they were committed. Section 29 requires the Secretary of State to maintain a register containing prescribed information relating to licences, and allows the Secretary of State to prescribe the information that must be included in the register. The operators of offshore installations installed for the purposes of carbon dioxide storage activities are required by s 30 to decommission them in a timely manner after operations have permanently ceased. Regulations may be made which set out the circumstances under which a licence may be terminated: s 31. Section 32 extends provisions relating to safety zones around oil and gas installations to carbon storage installations. Section 33 ensures that the use of carbon dioxide in the recovery of petroleum is not subject to the provisions on the licensing of

carbon dioxide storage requirements, unless the Secretary of State makes an order so extending those provisions. The Secretary of State may transfer any of his functions relating to the storage of carbon dioxide to a public body: s 34. Section 35 provides for interpretation.

Chapter 4 (s 36) General provisions about gas importation and storage

Section 36 introduces Sch 1, which makes amendments to legislation in connection with licensing of gas importation and storage.

Part 2 (ss 37-44) Electricity from renewable sources

Section 37 makes provision relating to the operation of the renewables obligation and empowers the Secretary of State to make a renewables obligation order, and (1) enables such an order to specify how the level of the obligation is to be set; (2) provides for the issue of renewables obligation certificates by the Gas and Electricity Markets Authority ('GEMA'); (4) allows the exclusion of specified renewable sources or descriptions of generating stations from eligibility for renewables obligation certificates or to the confinement of such eligibility to a proportion of electricity from specified sources; (5) allows the Secretary of State to provide different levels of support to different technologies; (6) allows electricity suppliers to make a payment to GEMA as an alternative to complying with its renewables obligation; (7) enables GEMA to be empowered to require electricity suppliers to provide certain information in relation to their participation in the renewables obligation; (8) makes provision in relation to consultation. Section 38 makes supplementary provision in relation to the consultation requirement. By virtue of s 39, the Secretary of State may modify, preserve, replace or otherwise deal with arrangements made pursuant to non fossil fuel obligation orders. Section 40 makes provision in relation to the Northern Ireland renewables obligation. The Secretary of State may modify electricity supply and distribution licences to introduce a scheme to encourage small-scale low-carbon generation of electricity: s 41. In the exercise of that power, the Secretary of State must comply with the procedural requirements set out in s 42. Section 43 makes supplemental provisions in relation to the modification power conferred by s 41. Section 44 and Sch 2 makes provision relating to electricity transmission licences, in particular by conferring on GEMA power to recover costs related to competitive tenders for determining to whom offshore electricity transmission licences are to be granted, and power to make property schemes to transfer property, rights and liabilities from the existing owner to the successful bidder.

Part 3 (ss 45-75) Decommissioning of energy installations

Chapter 1 (ss 45-68) Nuclear sites: decommissioning and clean-up

Section 45 requires a person applying for a nuclear site licence for a site where they intend to construct or operate a nuclear power station to notify the Secretary of State and submit a funded decommissioning programme for approval. Section 46 gives the Secretary of State the power to approve or reject a funded decommissioning programme, which must be exercised with the aim of securing that prudent provision is made for defined technical matters. It is an offence for a person required to submit a programme under s 45 by reason of an application for a nuclear site licence to use the site by virtue of the licence without an approved funded decommissioning programme in place: s 47. Section 48 provides that a funded decommissioning programme, and any condition attached to it, may be modified once it has been approved, in accordance with the procedure specified by s 49 and from the time determined in accordance with s 51. The Secretary of State may make regulations to disapply s 49 in relation to modifications proposed by a person other than the Secretary of State: s 50. Section 52 gives the Secretary of State powers to obtain information from the site operator and other persons with obligations under a funded decommissioning programme, and in certain circumstances, from bodies corporate associated with the site operator. The Secretary of State

may review an approved funded programme and request information about the programme from the site operator or any other person who has obligations under the programme: s 53. Section 54 empowers the Secretary of State to make regulations about the preparation, content and implementation of a funded decommissioning programme and about the modification of such programmes. Such regulations may allow the Secretary of State to rely on verification of financial matters by an independent third party: s 55. Provision is made by s 56 to protect monies set aside for the performance of designated technical matters under an approved funded decommissioning programme, in particular by disapplying insolvency legislation. Section 57 makes it an offence for a site operator or persons associated with the operator to fail to comply with their obligations under an approved decommissioning programme. Under s 58, the Secretary of State may direct a person with obligations under an approved funded decommissioning programme to take specified action where the person has failed to comply with any obligations imposed by the programme or has been engaged in unlawful conduct that may affect the programme. Section 59 makes it an offence to disclose certain information relating to an approved funded decommissioning programme and s 60 makes it an offence to knowingly or recklessly supply information which is false or misleading in a material respect. No proceeding for an offence under Ch 1 (ss 45-68), including an offence created by regulations under s 54, may be instituted except by the Secretary of State or the Director of Public Prosecutions: s 61. Under s 62, the Secretary of State may modify s 45 so that it applies to persons who apply for a nuclear site licence of a specified description. The Secretary of State may require the Health and Safety Executive or the Environment Agency to assist him in discharging his duties under Ch 1: s 63. Section 64 provides that the obligations on an operator or former operator under a decommissioning programme remain until the Secretary of State explicitly releases it from its obligations, even if it no longer holds a site licence. Section 65 makes it an offence to install or operate a nuclear installation without a site licence issued by Health and Safety Executive. Where the Secretary of State enters into an agreement for the disposal of relevant hazardous material which is the subject of a funded decommissioning programme, the agreement may provide for a fee to be paid to the Secretary of State: s 66. Provision is made by s 67 for determining whether one body corporate is associated with another. Section 68 provides for interpretation.

Chapter 2 (ss 69-71) Offshore renewables installations

Section 69 allows the Secretary of State to serve a decommissioning notice on an associate of a developer requiring the associate to submit a decommissioning programme, where the Secretary of State is not satisfied that adequate arrangements have been made by the developer. Provision is made by s 70 to protect funds set aside for carrying out of approved decommissioning programmes or for compliance with the conditions of their approval, in particular by disapplying insolvency legislation, and to enable the Secretary of State to direct the publication of specified information regarding that protection. Section 71 empowers the Secretary of State to require persons who are, or may in future be, subject to decommissioning obligations to provide certain information or documents to assist the Secretary of State in exercising functions relating to offshore renewables installations.

Chapter 3 (ss 72-74) Oil and gas installations

Section 72 extends the range of persons who may be given a notice to submit a programme relating to the abandonment of an offshore installation or submarine pipeline, and ensuring that persons who have not been entitled to derive benefits from a certain particular installation are not subject to a decommissioning obligation. Section 73 clarifies the information which may be required to satisfy the Secretary of State of a person's ability to fund its abandonment obligations, or potential obligations. Provision is made by s 74 to protect funds set aside for the purposes of abandonment programme, in particular by disapplying insolvency legislation, and to enable the Secretary of State to direct the publication of specified information regarding that protection.

Chapter 4 (s 75) Wells

Section 75 empowers the Secretary of State to require a person who has drilled or started drilling a well pursuant to a petroleum licence or a gas storage and unloading licence to provide information about that person's financial affairs within a specified period of time, allows the Secretary of State to require the person to take specified action, and provides for offences for non-compliance.

Part 4 (ss 76-82) Petroleum licensing

Section 76 provides that the Secretary of State may direct that the right or benefit in a petroleum licence which has been transferred without the Secretary of State's consent must revert back to the transferor and allows the Commissioners for Her Majesty's Revenue and Customs to disclose to the Secretary of State information relating to the transfer of rights granted under petroleum licences. Model clauses of petroleum licences are amended by s 77 and Sch 3. Section 78 makes provision to extend the scope of the regulatory regime by which third parties may obtain access to existing oil and gas transporting and processing infrastructure. Section 79 provides for compulsory modifications to the oil and gas transporting and processing infrastructure by way of notice and enforcement of such a notice. Provision is made by s 80 for a process of dispute resolution for third party access to oil processing facilities. The terms of the directions for third party access that may be made by the Secretary of State are dealt with by s 81 and, in relation to such third party access, provision for determining whether one body corporate is associated with another is made by s 82.

Part 5 (ss 83-102) Miscellaneous

Section 83 extends the primary objective of the Secretary of State and GEMA in their functions relating to the supply of gas through pipes from the interests of existing consumers to the interests of both existing and future consumers, and require the Secretary of State and GEMA to have regard to the need to contribute to the achievement of sustainable development. Section 84 empowers the Secretary of State, for the purpose of facilitating access to and/or efficient use of a transmission system in Great Britain or offshore waters, to modify a particular electricity generation, transmission, distribution or supply licence, standard licence conditions of those types of electricity licence, and documents maintained under the licence conditions of relevant electricity licences. Procedural provisions relating to the exercise those modification powers are set out in s 85 and supplementary provisions are set out in s 86. Section 87 makes provision relating to the Secretary of State's annual reports on progress towards sustainable energy aims. Section 88 empowers the Secretary of State to make specified modifications to gas and electricity licences so as to require licence holders to provide or install, or facilitate the provision, installation or operation of, a particular kind of meter. Procedural provisions relating to the exercise those modification powers are set out in s 89 and supplementary provisions are set out in s 90. Section 91 introduces Sch 4, which makes provision relating to the licensing of activities connected with the provision, installation or operation of prescribed types of gas or electricity meters. Section 92 transfers the functions of GEMA under specified gas meter legislation to the Secretary of State and s 93 makes consequential amendments. Section 94 empowers the Secretary of State, after consultation with licence holders, GEMA and any other appropriate persons, to modify the conditions of gas transporter licences. Section 95 transfers the functions of GEMA under specified gas meter legislation to the Secretary of State and s 96 makes consequential amendments. Section 97 empowers the Secretary of State, after consultation with licence holders, GEMA and any other appropriate persons, to modify the conditions of electricity transmission and distribution licences. Section 98 allows regulations to entitle an electricity distributor required to connect a person to the electricity distribution network to charge that person reasonable connection offer expenses. Provision is made by s 99 transferring responsibility for electricity safety standards, including inspection and enforcement, from the Secretary of State to the Health and Safety Executive. The Secretary of

State may establish a scheme to facilitate and encourage renewable generation of heat: s 100. Section 101 deems places where equipment, software or information relating to the enrichment of uranium is held as 'prohibited places', so as to extend to those places offences and penalties under official secrets legislation. The Secretary of State's principal objectives and general duties set out in the Gas Act 1986 ss 4AA-4B and the Electricity Act 1989 ss 3A-3D apply when the Secretary of State is exercising his modification powers under the 2008 Act ss 41-43, 84-86, 88-90, 94 and 97: s 102.

Part 6 (ss 103-113) General

Section 103 provides that where an offence has been committed under the Act by a body corporate with the consent or connivance of an officer of that body corporate, that officer is also guilty of the offence. Section 104 provides for the making of Orders in Council, orders or regulations and s 105 provides for the Parliamentary annulment and approval of such instruments. Section 106 deals with interpretation, and ss 107, 108, Schs 5, 6 provide for amendments and repeals. Section 109 makes provision for transitional or savings provisions. Section 110 deals with commencement, s 111 with financial provision, s 112 with extent and s 113 with short title.

Amendments, repeals and revocations

Subscribers should note that the lists below mention repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. This information may also be found in the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet. Please also note that this list is not exhaustive.

Specific provisions of a number of Acts are amended or repealed. These include: Pipe-lines Act 1962 s 10G, 10H; Nuclear Installations Act 1964 s 1(4); Food and Environment Protection Act 1985 ss 7A, 24; Gas Act 1986 ss 4AA, 41HA-41HC, 92; Petroleum Act 1987 s 21; Electricity Act 1989 ss 3A, 6D, 6E, 16A, 32-32M, 56FA-56FC, 106, Sch 7; Petroleum Act 1998 ss 5A-5C, 11, 13, 26(2), 28, 30, 38, 38A, 38B, 44, 45A, 47A; Anti-terrorism, Crime and Security Act 2001 s 80A; Sustainable Energy Act 2003 ss 1, 5; Energy Act 2004 ss 81(3), 105, 105A, 107(5)-(7), 108(3A), 110A, 110B, 112A, 116, 180(2) 188; Climate Change and Sustainable Energy Act 2006 ss 18, 23, 24.

Halsbury's Laws of England/STOP PRESS/FURTHER EDUCATION AND TRAINING ACT 2007

FURTHER EDUCATION AND TRAINING ACT 2007

The Further Education and Training Act 2007 makes provision in relation to the Learning and Skills Council for England, institutions within the further education sector, industrial training levies, and for the formation of, and investment in, companies and charitable incorporated organisations by higher education corporations. The Act received the royal assent on 23 October 2007 and the following provisions came into force on that date: ss 9, 21, 26, 28, 31-34. The following provisions came into force on 23 December 2007: ss 6-8, 11-13, 17 (in part), 18 (in part), 22 (in relation to England), 23 (in relation to England), 27, 29 (in part), 30 (in part), Schs 1 (in part), 2 (SI 2007/3505, SI 2007/3565). The following provisions came into force on 31 January 2008: ss 2 (in part), 29 (in part), Sch 1 (in part) (SI 2007/3505). The following provisions came into force on 21 February 2008: ss 1, 3-5, 29 (in part), 30 (in part), Schs 1 (in part), 2 (in

part) (SI 2008/313). The following provisions came into force on 2 March 2008: ss 24, 25, 29 (in part), 30 (in part), Schs 1 (in part), 2 (in part) (SI 2007/3505). The following provision came into force on 18 April 2008: s 17 (so far as not already in force) (SI 2007/3505). The following provisions came into force on 1 May 2008: ss 19 and 20 (SI 2007/3505). Section 2 (so far as not already in force) comes into force on 1 September 2008 (SI 2008/313). The remaining provisions come into force on a day or days to be appointed.

Part 1 (ss 1-13) The Learning and Skills Council for England

Section 1 reduces, from 12 to 10 members, the size of the Learning and Skills Council for England ('LSC'). The LSC is under a duty to establish a regional learning and skills council for each area of England specified by the Secretary of State: s 2. The local learning and skills councils are abolished by s 3. Section 4 amends the Learning and Skills Act 2000 s 24 to allow the Secretary of State to specify a body to formulate a strategy in relation to specified functions of the LSC for either the whole of England or part of it, and to require the Secretary of State to provide for the establishment of a body to formulate a strategy setting out how the functions of the LSC are to be carried out in Greater London. Under the 2007 Act s 5, the LSC's duty to establish a young people's learning committee and an adult learning committee is removed. Section 6 provides that the LSC, when performing its duty to secure the provision of facilities for education and training in relation to persons aged 16 to 19, and 19 years and over, must act with a view to encouraging diversity in education and training, and to increasing opportunities for individuals to exercise choice. The 2000 Act s 14 is amended by the 2007 Act s 7 to require the LSC to have regard to guidance from the Secretary of State concerning consultations with persons receiving or proposing to receive post-16 education or training, with employers or with other persons as may be specified in such guidance on the funding and provision of learning. Section 8 amends the 2000 Act s 15 to provide that the LSC must make and publish a plan for each academic year. The LSC can form any type of company with the consent of the Secretary of State: 2007 Act s 9. Section 10 amends the 2000 Act s 25 so that the Secretary of State may exercise the power to direct the LSC in relation to the establishment and dissolution of further education corporations. The powers of the LSC to design, develop and operate support services for persons and bodies exercising education and training functions are extended by the 2007 Act s 11. Section 12 allows the LSC to take part in arrangements for assisting persons to select, train for, obtain and retain employment. Section 13 deals with Northern Ireland.

Part 2 (ss 14-23) Further education institutions

Section 14 transfers to the LSC the power under the Further and Higher Education Act 1992 s 16 to incorporate further education institutions in England. The Secretary of State's power under s 27 to dissolve further education corporations in England is transferred to the LSC by the 2007 Act s 15. Section 16 amends the 1992 Act s 51 to reflect the transfer, from the Secretary of State to the LSC, of the power to establish and dissolve further education corporations. The Secretary of State's intervention powers are transferred to the LSC: 2007 Act s 17. Section 18 provides that Welsh ministers must prepare a statement of their policy with respect to the exercise of their intervention powers, keep the statement under review and, if they consider it appropriate, prepare a revised statement. The 1992 Act s 76 is amended by the 2007 Act s 19 to enable the Privy Council to make orders granting further education institutions in England the power to award only foundation degrees. The Secretary of State is required, within a specified time period, to lay before Parliament a report on the effect of the grant of powers to award foundation degrees: s 20. Section 21 amends the 1992 Act s 19 to clarify the power of further education corporations to form or invest in all types of company. The 2007 Act s 22 imposes a duty on the governing bodies of further education institutions in England to have regard to guidance from the Secretary of State, and for the governing bodies in Wales to

have regard to guidance from Welsh Ministers, in relation to consultations with persons who are, or who are likely to become, students of the institution, or with employers in connection with decisions which will affect them. Section 23 amends the Education Act 2002 s 137 to provide that a person appointed as the principal of a further education institution in England before the commencement of s 137 is not exempt from the requirement that he must have achieved, or be working towards, a specified leadership qualification.

Part 3 (ss 24, 25) Industrial training levies

The 2007 Act s 24 amends the Industrial Training Act 1982 s 11 to allow support for levy proposals to be demonstrated by consulting more widely with employers. Industrial training boards are required by the 2007 Act s 25 to submit proposals for three-year levy orders to the Secretary of State, specifying up to three levy periods for each three-year period.

Part 4 (ss 26-34) Miscellaneous and general

Section 26 clarifies the power of higher education corporations to form or invest in companies, and provides that higher education corporations can form or become members of charitable organisations. The Government of Wales Act 2006 Sch 5 Pt I is amended by the 2007 Act s 27 to confer enhanced legislative competence on the National Assembly for Wales in specific areas. Section 28 provides that any power to make an order or regulations under the 2007 Act is exercisable by statutory instrument. Section 29 gives effect to Sch 1, which makes various amendments, and s 30 gives effect to the repeals made in Sch 2. Section 31 deals with interpretation, s 32 with commencement, s 33 with extent and s 34 with the short title.

Amendments, repeals and revocations

Subscribers should note that the list below mention repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. This information may also be found in the COMMENCEMENT OF STATUTES table in the *Current Service* Noter-up booklet. Please also note that these lists are not exhaustive.

Specific provisions of a number of Acts are amended or repealed. These include: Learning and Skills Act 2000 ss 1, 2, 14, 15, 18-24, Sch 2; Industrial Training Act 1982 s 11; Education Reform Act 1988 s 124; Further and Higher Education Act 1992 ss 19, 51, 57, 76; Education Act 2002 ss 137, 209; Children Act 2004 s 18(3)(c).

Halsbury's Laws of England/STOP PRESS/GREATER LONDON AUTHORITY ACT 2007

GREATER LONDON AUTHORITY ACT 2007

The Greater London Authority Act 2007 makes further provision with respect to the Greater London Authority, amends the Greater London Authority Act 1999, and makes further provision with respect to the functional bodies, within the meaning of that Act, and the Museum of London. The Act received the royal assent on 23 October 2007 and ss 53-55, 58, 59 came into force on that day, and ss 28 and 46 came into force on 23 December 2007. Sections 12-16, 57 (in part) and Sch 2 (in part) came into force on 30 October 2007: SI 2007/3107. Sections 1-16 (so far as not already in force), 17-27, 29, 37, 39, 40-44 (so far as not already in force), 50 (so far as not already in force), 52 (so far as not already in force), 57 (in part), Schs 1, 2 (in part)

came into force on 21 January 2008: SI 2008/113). Sections 31-36, 45, 47-49, 51, 57 (in part), Sch 2 (in part) came into force on 6 April 2008: SI 2008/582. Section 30 came into force on 27 June 2008: SI 2008/1372. The remaining provision, s 38, comes into force on a day or days to be appointed.

Part 1 (ss 1-16) General functions of the authority

Section 1 allows the Greater London Authority to establish and administer a severance pay scheme for the Mayor of London and the members of the London Assembly on ceasing to hold office. By virtue of s 2, the Mayor must have regard to any comments submitted to him by the London Assembly or any of the functional bodies in response to consultation on his strategies, and must give the Assembly a response in writing setting out which of its comments he accepts for implementation in the strategy and, where he has not accepted a comment, giving the reasons why. The Mayor is required to submit his periodic report to the Assembly at least five clear working days before each Assembly meeting: s 3. Section 4, Sch 1 provide for the Assembly to hold confirmation hearings for certain statutory appointments made by the Mayor. The time limit for the Assembly to summon certain categories of people to attend an Assembly meeting for questioning and to produce documents is extended from three to eight years after the end of their period in office or termination of their relationship with the Assembly: s 5. The Assembly must prepare and publish an annual report on its work and achievements during the year: s 6. By virtue of s 7, after consulting the Mayor and the Assembly, the head of the Authority's paid service is to appoint the Authority's staff, except for the head of the Authority's paid service, the Authority's monitoring officer and the Authority's chief finance officer. The head of the Authority's paid service may delegate to a member of staff his functions of making appointments and setting terms and conditions: s 8. The Mayor and Assembly, acting jointly, must appoint the head of the Authority's paid service (s 8), the Authority's monitoring officer (s 9) and the Authority's chief finance officer (s 10). Section 11 makes consequential amendments. Sections 12-15 provide for separate component budget requirements for the Assembly and the Mayor and make detailed provision relating to those component budget requirements. The Deputy Mayor of London must exercise the responsibilities of the Mayor for setting the budget if the Mayor is temporarily unable to act: s 16.

Part 2 (ss 17-19) Transport

Section 17 provides for the Secretary of State to give consent in writing to the disposal of operational land by Transport for London. The restriction on political representatives being members of Transport for London is removed by s 18. Section 19 prohibits the payment of remuneration and most allowances to Transport for London members, other than chairman or deputy chairman, who are also Assembly members.

Part 3 (s 20) The London Development Agency

Section 20 removes the prohibition on payments of allowances to any chairman or deputy chairman of the London Development Agency who is also an Assembly member.

Part 4 (ss 21-24) Health

Section 21 provides for the appointment of the Health Adviser and one or more deputy health advisers to the Authority. Section 22 imposes a duty on the Mayor to prepare and publish a health inequalities strategy containing proposals and policies for promoting the reduction of health inequalities between persons living in London, and empowers the Secretary of State to direct the Mayor to revise the health inequalities strategy. By virtue of s 23, the Authority must

have regard to the effect of any proposed exercise of its general power on health inequalities, and must exercise its powers in a way that is best calculated to promote the reduction of health inequalities between persons living in London. The Mayor must have regard to the effect of his strategies or revisions to his strategies on the health of persons living in London: s 24.

Part 5 (ss 25-27) The London Fire and Emergency Planning Authority

Section 25 enables the Mayor to make two appointments of his own nomination to the London Fire and Emergency Planning Authority which is given the discretion, by virtue of s 26, to pay certain allowances to its chairman or vice-chairman. Section 27 empowers the Mayor to issue directions and guidance to the London Fire and Emergency Planning Authority, having regard to the Fire and Rescue National Framework or fire safety enforcement guidance, and empowers the Secretary of State to direct the Mayor to revoke the directions or revise the guidance if he considers that it conflicts with the Fire and Rescue National Framework or fire safety enforcement guidance.

Part 6 (s 28) Housing

Section 28 (1) requires the Mayor to prepare and publish a London housing strategy, which is to include a statement of the Mayor's recommendations as to the amount, type and location of new housing which should be provided in London; (2) requires the Mayor to consult the Housing Corporation and bodies which are representative of registered social landlords in preparing the strategy; and (3) confers power on the Secretary of State to give guidance to the Mayor in preparing or revising the strategy, and to give directions to him if any part of the strategy is inconsistent with national housing policy or likely to be detrimental to any region adjoining London.

Part 7 (ss 29-36) Planning

Section 29 introduces additional procedures relating to consultation on the Mayor's spatial development strategy. Section 30 gives the Mayor a power of intervention in respect of a local planning authority's local development scheme. Section 31 empowers the Mayor to direct that planning applications which are of potential strategic importance in London should be determined by him in place of the local planning authority, and ss 32-34 empower him to agree planning obligations related to applications which he is to determine under s 31. By virtue of s 35, the applicant and the local planning authority to which a planning application has been made may make oral representations to the Mayor at a representation hearing before he determines an application. Regulations which make provision for the making of a planning contribution may include provision for the making of a planning contribution in circumstances where the Mayor has directed that a planning application should be determined by him in place of the local planning authority: s 36.

Part 8 (ss 37-44) Environmental functions

Section 37 requires London waste authorities to exercise some of their waste collection and disposal functions in general conformity with the Mayor's municipal waste management strategy. Section 38 establishes the London Waste and Recycling Board, the objectives of which are to promote and encourage the production of less waste, an increase in the proportion of waste which is re-used or recycled and the use of methods of collection, treatment and disposal of waste which are beneficial to the environment; the Board may give financial assistance and provide advice in order to fulfil its objectives. Waste authorities must inform the Mayor if they intend to tender for a waste contract: s 39. The Authority is required to consider the effects that

any proposed exercise of its general statutory power would have on climate change, and the consequences of climate change: s 40. Section 41 requires the Mayor, when preparing his strategies, to have regard to climate change and its consequences. By virtue of s 42, the Mayor is required to take action in London to help prevent climate change and to help London to adapt to the actual and expected consequences of climate change, and the Mayor and Assembly are each required to take into account government policies on climate change whenever they exercise their functions. Section 43 requires the Mayor to prepare a London climate change mitigation and energy strategy, which is to contain proposals for the contribution to be made in London towards the mitigation of climate change and the achievement of objectives in national policies relating to energy. The Mayor must prepare and publish an adaptation to climate change strategy for London: s 44.

Part 9 (ss 45-51) Culture, media and sport

Section 45 transfers from the Prime Minister to the Authority the power to appoint nine of the eighteen members of the Board of Governors of the Museum of London, and s 46 extends from three to four years the maximum period of appointment of the governors. Sections 47 and 48 transfer from the Secretary of State to the Authority certain powers in relation to the Board of Governors. The requirement for reports about the exercise of functions of the Board of Governors to be laid before each House of Parliament is removed by s 49. The Cultural Strategy Group for London must consult specified bodies when proposing revisions to the Cultural Strategy or when consulted by the Mayor if he makes revisions other than those proposed by the Group: s 50. Section 51 requires the Mayor to make appointments to a body of a description prescribed by the Secretary of State as soon as reasonably practicable after receiving a written request from the body.

Part 10 (s 52) Miscellaneous and general

Section 52 enables the Authority and the functional bodies to arrange for administrative, professional or technical services to be provided for them by any of the others, or to be shared by two or more of them, and enables those bodies to share such functions by establishing joint committees.

Part 11 (ss 53-59) Supplementary provisions

Section 53 provides that any power conferred on the Secretary of State to make an order is exercisable by statutory instrument. Any directions given under the Act, and any variation or revocation of such directions, must be in writing: s 54. Section 55 contains financial provisions and s 56 makes transitional provision relating to the Mayor's consultation in connection with his new statutory strategies. Section 57, Sch 2, deal with repeals, s 58 provides for interpretation and s 59 deals with short title, citation, commencement and extent.

Amendments, repeals and revocations

Subscribers should note that the list below mention repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. This information may also be found in the COMMENCEMENT OF STATUTES table in the *Current Service* Noter-up booklet. Please also note that these lists are not exhaustive.

Specific provisions of a number of Acts are added, amended or repealed. These include: Museum of London Act 1965 ss 1, 3, 9, 14, 15, Schedule; Museum of London Act 1986 ss 3, 5; Town and Country Planning Act 1990 ss 2A-2F, 106-106B; Regional Development Agencies Act

1998 Sch 2; Greater London Authority Act 1999 ss 26A, 30, 41, 42, 42A, 45, 54, 60A, 61, 65A, 67, 72, 73, 85, 127, 127A, 163, 309A-309H, 328A, 328B, 333A-333D, 335, 355, 356-356B, 358, 360, 361A-361E, 376, 377A, 380, 401A, 404, 420, 424, Schs 4, 4A, 6, 7, 10, 28; Planning and Compulsory Purchase Act 2004 ss 15, 46; Railways Act 2005 s 17.

Halsbury's Laws of England/STOP PRESS/HEALTH ACT 2009

HEALTH ACT 2009

The Health Act 2009 makes provision about the NHS Constitution and about health care (including provision about the National Health Service and health bodies), and makes provision for the control of the promotion and sale of tobacco products and about the investigation of complaints about privately arranged or funded adult social care. The Act received royal assent on 12 November 2009 and ss 8, 9(5), 10, 20-23, 37, 39-41, Schs 4, 6 came into force for certain purposes or in part on that day. Section 34, Sch 4 (in part) came into force on 12 January 2010. Sections 1-7, 11-13, 15 (in part), 19 (in part), 33, 36, Schs 1, 3 (in part), 18 (in part), 19 (in part) came into force on 19 January 2010; ss 15 (in part), 16, 17, 18 (in part), Sch 2 came into force on 15 February 2010; and ss 8-10 (so far as not already in force) came into force on 1 April 2010: SI 2010/30. Section 25 came into force in part on 18 March 2010 and in remainder on 24 May 2010: SI 2010/779. The remaining provisions come into force on a day or days to be appointed. For details of commencement, see the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet.

Part 1 (ss 1-14) Quality and delivery of NHS services in England

Chapter 1 (ss 1-7) NHS Constitution

Section 1 defines the 'NHS Constitution' for the purposes of Pt 1. The bodies listed in s 2 are required to have regard to the NHS Constitution. The Secretary of State has a duty under s 3 to ensure that the NHS Constitution continues to be available to patients, staff and members of the public and that, at least once in any period of ten years, a review of the Constitution is carried out. Other revisions of the Constitution may be made other than as a result of the ten-year review: s 4. Section 5 requires the Secretary of State to ensure that the Handbook to the NHS Constitution continues to be available to patients, staff and members of the public and to carry out a review of the Handbook at least once every three years, with the first review being completed no later 5 July 2012. The Secretary of State has a duty under s 6 to publish a report every three years, the first such report to be published no later than 5 July 2012, on the effect of the NHS Constitution on patients, staff, carers and members of the public since the last report on the Constitution and to lay before Parliament a copy of each such report. Any revision of the guiding principles of the Constitution as a result of the ten-year review under s 3 or any revision of the Constitution under s 4 may only be made in accordance with regulations made by statutory instrument by the Secretary of State: s 7.

Chapter 2 (ss 8-10) Quality accounts

Primary care trusts, NHS trusts all or most of whose hospitals, establishments and facilities are in England, special health authorities, and NHS foundation trusts have a duty under s 8 to publish, in accordance with regulations made by the Secretary of State, prescribed information relevant to the quality of any NHS services provided by them, any NHS services provided under arrangements made by them by other persons, and certain primary ophthalmic services provided in England and for the provision of which the body provides assistance or support. Section 9 makes supplementary provision about the duty under s 8, and s 10 requires

regulations under s 8 to be made by statutory instrument subject to the negative resolution procedure.

Chapter 3 (ss 11-13) Direct payments

Provision under s 11 enables the Secretary of State to make a direct payment to a patient or his representative in order to purchase goods or services that might otherwise be provided by the National Health Service, and to make regulations about any such payment; and the Secretary of State may provide by regulations for pilot schemes in accordance with which direct payments may be made and may make arrangements with other bodies for their assistance in connection with direct payments. The jurisdiction of the Health Service Commissioner is extended by s 12. Section 13, Sch 1 make minor and consequential amendments relating to direct payments, including certain social care direct payments.

Chapter 4 (s 14) Innovation

In order to promote innovation in the provision of health services in England, the Secretary of State may make payments as prizes.

Part 2 (ss 15-19) Powers in relation to health bodies

Chapter 1 (ss 15-18) Powers in relation to failing NHS bodies in England

Section 15, Sch 2 make provision for the de-authorisation of NHS foundation trusts. New provisions under s 16 enable the Secretary of State to appoint trust special administrators to NHS trusts and NHS foundation trusts, make further provision for the de-authorisation of, and de-authorised, NHS foundation trusts, make provision for the functions of the trust special administrators during the period of appointment, which functions include consultation by them and their recommendations to the Secretary of State, and provide for the Secretary of State's final decision in relation to a trust. Under s 17, powers are conferred on the Secretary of State to direct a primary care trust to appoint a trust special administrator to exercise on its behalf specified provider functions. Consequential amendments are made by s 18 in relation to trust special administrators.

Chapter 2 (s 19) Suspension

Section 19, Sch 3 make amendments to provide for powers of suspension in relation chairmen, vice-chairmen and other members of NHS bodies.

Part 3 (ss 20-36) Miscellaneous

Section 20 amends provision relating to the exclusion for specialist tobacconists in respect of the prohibition of tobacco advertising, s 21 amends and makes further provision, in consequence of developments in technology, about the prohibition of tobacco displays. Provision is made by s 22 for regulations to prohibit the sale of tobacco from vending machines in England and Wales. Corresponding provision is made by s 23 in relation to Northern Ireland. Various minor and consequential amendments are made by s 24, Sch 4 relating to the advertising and promotion of tobacco products. A primary care trust has a duty under s 25, in accordance with regulations, to assess needs for pharmaceutical services in its area and to publish a statement of its first assessment and any revised assessment. New arrangements are made by s 26 for inclusion on a primary care trust's pharmaceutical list for the provision of NHS pharmaceutical services, and a minor amendment is made by s 27 to correct an anomaly in relation to applications for such inclusion. Section 28 provides for notices and penalties where a practitioner providing pharmaceutical services under arrangements with a primary care trust breaches a term of such arrangements. Restrictions on primary care trusts providing local pharmaceutical services or providing such services to other primary care trusts in certain circumstances are removed by s 29. Section 30 makes a minor amendment to make clear that

certain provision for the inclusion of an applicant on a local health board pharmaceutical list for a fixed period of time may apply to any application under the National Health Service (Wales) Act 2006 s 83. New provision under the 2009 Act s 31 provides for the issuing by local health boards of notices to NHS contractors who have breached a term of arrangements for providing NHS pharmaceutical services or arrangements for providing general ophthalmic services and for the withholding by the boards of payments to such contractors. Changes introduced by s 32 enable local health boards to provide local pharmaceutical services in prescribed circumstances. An NHS foundation trust designated as a mental health foundation trust, where it appears to the regulator that it provides goods or services only or mainly for the prevention, diagnosis or treatment of any disorder or disability of the mind or for the benefit in any other way of people suffering from a disorder or disability of the mind, may be permitted to earn up to 105 per cent of its total income in each financial year from income derived from private charges: s 33. Section 34 removes the entitlement, for all persons aged 60 or over regardless of their income, to contribution to the cost of optical appliances. Section 35, Sch 5 confer power on the Commission for Local Administration in England to investigate complaints about privately arranged or funded adult social care and make consequential amendments. Information held by Her Majesty's Revenue and Customs for the purposes of functions relating to income tax may be disclosed by it to specified persons for the purposes of functions in connection with the analysis or dissemination of information relating to the income or expenses of dental practitioners or general medical practitioners: s 36.

Part 4 (ss 37-41) General

Section 37 confers power on the Secretary of State to make transitional and consequential provision in relation to the coming into force of the Act. Section 38, Sch 6 provide for repeals and revocations. Section 39 deals with the extent of the Act, s 40 with commencement and s 41 with the short title.

Amendments, repeals and revocations

Subscribers should note that the list below mentions repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. Please also note that the list is not exhaustive.

Specific provisions of a number of Acts are added, amended or repealed. These include: National Assistance Act 1948 s 24(6B); Local Government Act 1974 ss 34A-34T, Sch 5A; Licensing (Alcohol Education and Research Act) 1981 Sch 1 paras 3A, 3B, 4A; Mental Health Act 1983 s 117(2C); Human Fertilisation and Embryology Act 1990 Sch 1 paras 5A, 5B; Children and Young Persons (Protection from Tobacco) Act 1991 s 5A; Health Service Commissioners Act 1993 s 2B; Safeguarding Vulnerable Groups Act 2006 s 6(8C), (8D); Tobacco Advertising and Promotion Act 2002 ss 7A-7D; Human Tissue Act 2004 Sch 2 paras 9A-9C; National Health Service Act 2006 ss 12A-12D, 52A-52E, 65A-65Z3, 128A, 129(2A)-(2C), (3A), (4A), (10A), 150A, Sch 8 para 2A, Sch 19 para 5A; National Health Service (Wales) Act 2006 s 106A, Sch 10 para 2A, Sch 13 para 5A.

Halsbury's Laws of England/STOP PRESS/HUMAN FERTILISATION AND EMBRYOLOGY ACT 2008

HUMAN FERTILISATION AND EMBRYOLOGY ACT 2008

The Human Fertilisation and Embryology Act 2008 amends the Human Fertilisation and Embryology Act 1990 and the Surrogacy Arrangements Act 1985 and makes provision about the persons who in certain circumstances are to be treated in law as the parents of a child. The 2008 Act received the royal assent on 13 November 2008 and ss 61-64, 67-69 came into force on that date. The following provisions came into force on 1 October 2009: (1) ss 1-7, 9-13, 16-18, 20, 22, 23, 26 (in part), 27-29, 31, 32, 54 (for certain purposes), 55, 59, 60, Schs 1-3, 5 and various repeals in Sch 8; and (2) so far as not already in force, ss 8, 14, 15, 19, 21, 24, 25 (in part) and Sch 7: SI 2009/2232. The remaining provisions come into force on a day or days to be appointed.

Part 1 (ss 1-32) Amendments of the Human Fertilisation and Embryology Act 1990

Part 1 amends the Human Fertilisation and Embryology Act 1990. By virtue of the 2008 Act s 1, the Human Fertilisation and Embryology Act 1990 applies to all live human embryos regardless of the manner of their creation, and to all live human gametes. The 2008 Act s 2 clarifies that any reference to 'nuclear DNA' includes DNA in both the nucleus and pronucleus of an embryo. Under s 3, embryos created by artificial gametes or genetically modified gametes may not be placed in a woman for the purpose of reproductive cloning. Human admixed embryos, which contain both human and animal DNA, are brought within the regulation of the Human Fertilisation and Embryology Act 1990 by the 2008 Act s 4. Section 5 gives effect to Sch 1, which makes changes to the conditions for disqualification for appointment to the chair, deputy chair and membership of the Human Fertilisation and Embryology Authority. By virtue of s 6, the Authority has the additional general functions of maintaining a statement of general principles and promoting compliance with the requirements imposed by the Human Fertilisation and Embryology Act 1990 and with the code of practice under s 25. The Authority must carry out its functions effectively, efficiently and economically, and have regard to the principles of best regulatory practice in doing so: 2008 Act s 7. The Authority is entitled under s 8 to make arrangements with a government department, a public authority or the holder of a public office for the carrying out of any of its functions. The Authority may also provide assistance to any other public authority in the United Kingdom: s 9. The Authority is permitted by s 10 to delegate its functions.

Section 11 gives effect to Sch 2, which alters the purposes for which research licences relating to embryo testing may be granted. Under s 12, no money or other benefit may be given or received for the supply of human admixed embryos. Schedule 3, which is given effect by s 13, makes provision relating to consent to store or use embryos or gametes to create an embryo in vitro. It is a condition of a licence for treatment that embryos that are known to have an abnormality, including a gender-related abnormality, are not to be preferred to embryos not known to have such an abnormality: s 14, Sch 4. The maximum statutory storage limit for embryos is brought into line with the ten-year limit applicable to the storage of gametes by s 15. Section 16 removes the requirement for a licence application to be in a particular form and for an initial and an additional fee to be paid. The definition of 'nominal licensee' is repealed by s 17. Under s 18, the Authority may revoke or vary any licence on application by the person responsible or the licence holder. Section 19 makes minor changes to the procedures for notifying licensing decisions to interested parties. A licence may not be suspended for longer than three months, although this period may be renewed: s 20. The Authority is obliged by s 21 to maintain one or more appeals committees.

Section 22 makes provision concerning the directions that may be given in respect of human admixed embryos. By virtue of s 23, the code of practice under the Human Fertilisation and Embryology Act 1990 s 25 must contain information about the giving of a suitable opportunity to receive proper counselling and the provision of such relevant information as is proper. The 2008 Act s 24 alters the rules regarding the information that must be kept on the register of information and the information on the register to which a donor-conceived person is entitled to have access. Provision is made by s 25 regarding the information that may be disclosed by the

Authority. Section 26 confers a regulation-making power to enable eggs and/or embryos with altered mitochondrial DNA to be classified as permitted eggs or embryos so that they can be implanted in a woman. The circumstances in which the Authority is entitled to charge a fee under the Human Fertilisation and Embryology Act 1990 are prescribed by s the 2008 Act 27. It is not unlawful for a member or employee of the Authority to be in possession of embryos, gametes or human admixed embryos in the course of his employment: s 28, Sch 5. Section 29 adjusts the rules regarding offences and penalties under the Human Fertilisation and Embryology Act 1990 to take account of the prohibition on the creation and use of human admixed embryos. The making of regulations under the Human Fertilisation and Embryology Act 1990 is dealt with by the 2008 Act s 30. Under ss 31, 32, the Secretary of State is empowered to make amendments to legislation consequent on changes made to the definitions of the terms 'embryo', 'gametes' and 'human admixed embryo'.

Part 2 (ss 33-58) Parenthood in cases involving assisted reproduction

Section 33 re-enacts the Human Fertilisation and Embryology Act 1990 s 27, and defines a person's mother as the woman who carries a child following assisted reproduction, unless the child is subsequently adopted or parenthood is transferred through a parental order. By virtue of the 2008 Act s 34, ss 35-47 apply, in the case of a child who is being or has been carried by a woman as a result of the placing in her of an embryo or of sperm and eggs or her artificial insemination, to determine who is to be treated as the other parent of the child. Where a child is conceived by a married woman as a result of treatment with donor sperm, her husband is to be treated as the child's father unless it is shown that he did not consent to his wife's treatment: s 35. Under ss 36, 37, an unmarried man is to be regarded as the father of a donor-conceived child if he is treated together with the mother in a licensed clinic in the United Kingdom and both parties have given notice of their consent to him being treated as the father. Section 38 provides that, where a person is to be treated as the father of a child by virtue of s 35 or 36, no other person is to be treated as the father of the child. Where a man's sperm, or an embryo created with his sperm, is used after his death, the man may be treated as the child's father for the purposes of birth registration if various specified conditions are met: s 39. Section 40 makes equivalent provision for the case where donated sperm has been used. The situations in which a man is not to be treated as being a child's father despite his sperm being used are prescribed by s 41.

By virtue of s 42, female civil partners are to be treated in the same way as married persons in relation to determining the parenthood of children born via artificial insemination. Sections 43 and 44 make provision about same-sex female couples who are not civil partners which corresponds to provision made about opposite-sex unmarried couples by ss 36 and 37. There are various circumstances in which ss 42 and 43 do not affect who is to be considered the parent of a child: s 45. Provision is made by s 46 concerning the registration of a deceased same-sex partner as a child's parent in the register of births in certain circumstances. Where a woman has not carried a child, s 47 makes it clear that she is to be treated as a parent of the child only if the provisions relating to parenthood of the mother's partner apply or she has adopted the child. Under s 48, where a person is to be treated by virtue of ss 33-47 as the mother, father or parent of a child, or as not being the parent of the child, this status applies for all legal purposes. Section 49 specifies the meaning of references to parties to a marriage, s 50 specifies the meaning of references to a civil partnership, and s 51 specifies the meaning of 'a relevant register of births'. The period during which a woman may elect for her deceased partner to be treated as her child's parent for the purposes of birth registration may be extended with the consent of the relevant Registrar General: s 52. Section 53 deals with interpretation. The categories of couples who can apply for a parental order where a child has been conceived using the gametes of at least one of the couple and has been carried by a surrogate mother are extended by s 54. Section 55 makes supplementary provision in relation to parental orders. Section 56 gives effect to Sch 6, which makes various amendments relating

to parenthood in cases involving assisted reproduction. Section 57 repeals certain provisions and makes transitional provision, and s 58 deals with the interpretation of terms used in Pt 2.

Part 3 (ss 59-69) Miscellaneous and General

The Surrogacy Arrangements Act 1985 is amended by the 2008 Act s 59 to enable bodies that operate on a not-for-profit basis to receive payment for providing some surrogacy services. Section 60 amends the Environmental Protection Act 1990 by excluding human admixed embryos and human embryos as defined by the Environmental Protection Act 1990 from the definition of 'genetically modified organisms'. The 2008 Act ss 61, 62 and 64 make provision concerning the making of orders, and s 63 deals with interpretation. Section 65 gives effect to Sch 7, which makes minor and consequential amendments, and s 66 gives effect to Sch 8, which makes various repeals and revocations. Section 67 deals with extent, s 68 with commencement, and s 69 specifies the short title.

Amendments, repeals and revocations

Subscribers should note that the lists below mention repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. This information may also be found in the COMMENCEMENT OF STATUTES table in the Current Service Noter-up binder. Please also note that these lists are not exhaustive.

The following Acts are repealed: Human Fertilisation and Embryology (Disclosure of Information) Act 1992; Human Reproductive Cloning Act 2001.

Specific provisions of a number of Acts are amended or repealed. These include: Environmental Protection Act 1990 s 106; Human Fertilisation and Embryology Act 1990 ss 1-4, 8, 9, 11-14, 16-21, 24, 25, 31, 33, 41, 45, Schs 1-3; Surrogacy Arrangements Act 1995 ss 1-3.

Halsbury's Laws of England/STOP PRESS/LOCAL DEMOCRACY, ECONOMIC DEVELOPMENT AND CONSTRUCTION ACT 2009

LOCAL DEMOCRACY, ECONOMIC DEVELOPMENT AND CONSTRUCTION ACT 2009

The Local Democracy, Economic Development and Construction Act 2009 makes provision for the purposes of promoting public involvement in relation to local authorities and other public authorities, about bodies representing the interests of tenants, local freedoms and honorary titles, and the procedures of local authorities and their powers relating to insurance and the audit of entities connected with them, to establish the Local Government Boundary Commission for England and to make provision relating to local government boundary and electoral change, about local and regional development, and to amend the law relating to construction contracts. The Act received the royal assent on 12 November 2009 and the following provisions came into force on that date: ss 25, 26, 62, 64, 68, 146-150, Sch 3. Sections 27-30, 32, 33, and 121-137 came into force on 12 January 2010 and the following provisions also come into force on that day: ss 114-117 (SI 2009/3318). The following provisions were brought into force on 25 November 2009: ss 69 (in part), 71, 84, 86, 87 (SI 2009/3087). The following provisions were brought into force on 17 December 2009: ss 88-113, 118-120 and Sch 6 (SI 2009/3318). Further provisions come into force on 1 April 2010: ss 23, 24, 31, 55-61, 63, 65-67, 69, 70, 72-83, 85, Schs 1, 2, 4, 5, 7 (in part) (SI 2009/3318). The remaining provisions come into force on a day or

days to be appointed. For details of commencement see the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet.

Part 1 (ss 1-30) Democracy and involvement

Chapter 1 (ss 1-9) Duties relating to promotion of democracy

Section 1 places a duty on principal local authorities to promote understanding of their functions and their democratic arrangements. By virtue of s 2, principal local authorities are under a duty to promote understanding among local people of public bodies which relate to the authority's area. A duty is placed on principal local authorities by s 3 to promote understanding among local people of courts boards, independent monitoring boards for prisons and immigration removal centres and Youth Offending Teams. Section 4 places a duty on principal local authorities to promote understanding among local people of lay justices. By virtue of s 5, ss 2-4 do not apply to principal local authorities if information has not been provided by the connected authorities, monitoring boards, courts boards, youth offending teams and, in the case of lay justices, the Lord Chancellor, after it has been requested of them. The appropriate national authority may produce guidance for principal local authorities on how to fulfil their duties: s 6. Section 7 deals with the Isles of Scilly. Section 8 specifies that any order made under Pt 1 Ch 1 is to be made by statutory instrument and is to be subject to negative resolution procedure. Section 9 deals with interpretation.

Chapter 2 (ss 10-22) Petitions to local authorities

Section 10 places duties on principal local authorities in relation to electronic petitions signed by those who live, work or study in local areas. Under s 11, principal local authorities are required to make, publicise and comply with a scheme for handling both paper and electronic petitions. Section 12 makes provision about the petitions to which a petition scheme must apply. By virtue of s 13, petition schemes are required to ensure that petitions are acknowledged in writing within a time specified in the scheme. Principal local authorities are required by s 14 to take one or more steps in response to petitions which meet the specified criteria and are therefore 'active' petitions. Section 15 gives an automatic right for the matter raised in a petition to be debated by the full council if more than a specified number of people have signed it. By virtue of s 16, certain senior officers of a principal local authority can be called to account at a public meeting. Under s 17, the petition organiser is given the power to ask an overview and scrutiny committee, or its equivalent in authorities not operating executive arrangements, to review the principal local authority's response to their petition, if the organiser is not satisfied with the steps taken by the authority under s 14. Section 18 sets out other issues which principal local authorities' schemes may include. The powers of the appropriate national authority to issue guidance in relation to the discharge of the petition function by principal authorities are set out by s 19. Section 20 provides that the appropriate national authority may by order make provision for the handling of petitions by any specified body. Section 21 provides that orders under Ch 2 are to be made by statutory instrument. Section 22 deals with interpretation.

Chapter 3 (ss 23, 24) Involvement in functions of public authorities

Section 23 places a duty on the authorities listed to involve representatives of interested persons in the exercise of their functions, where they consider that it is appropriate to do so. The Secretary of State may, by virtue of s 24, issue guidance on the discharge of the duties under s 23.

Chapter 4 (ss 25, 26) Housing

Section 25 makes provision for the Secretary of State to establish and give financial or other support to a body that will represent the interests, at national level, of housing tenants in England. Section 26 provides a power to the Secretary of State to nominate a body

representing the interests of social housing tenants for the purposes of consultation in connection with certain functions carried out by the social housing regulator and the Secretary of State and set out in the Housing and Regeneration Act 2008.

Chapter 5 (ss 27-29) Local freedoms and honorary titles

The 2009 Act s 27 makes provision for a daughter of a freeman of a city or town to be admitted as a freeman where a son would have the right to be so admitted. By virtue of s 28, the laws relating to the admission of freeman are more easily amended. The power to confer the title of 'honorary freeman' is extended by s 29 to all principal councils, parish and community councils, and charter trustees in England.

Chapter 6 (s 30) Politically restricted posts

Section 30 removes the requirement imposed by the Local Government and Housing Act 1989 s 2 for local authorities to prepare and maintain a list of posts that exceed a specified salary, and which as a consequence mean that the post-holder is subject to political restrictions.

Part 2 (ss 31-54) Local authorities: governance and audit

Chapter 1 (ss 31-33) Governance

Section 31 requires local authorities, with the exception of district councils in areas where there is a county council, to designate one of their officers as a scrutiny officer to support the work of the authority's overview and scrutiny committee. By virtue of s 32, the scope of joint overview and scrutiny arrangements are broadened so that joint overview and scrutiny committees may be set up by any two or more local authorities, so that such committees may make reports and recommendations on any matter, other than excluded matter, and so that associated authorities may be required to provide any information to joint overview and scrutiny committees, other than that relating to crime and disorder matters, and not just that relevant to local improvement targets. Section 33 extends the legislative competence of the National Assembly for Wales to make Measures of the National Assembly for Wales.

Chapter 2 (ss 34, 35) Mutual insurance

Section 34 provides that a qualifying authority may become a member of a body corporate whose objects must be those specified and all of whose members are other qualifying bodies. Section 35 lists the qualifying authorities that are being provided with the power to become members of a mutual insurance body corporate.

Chapter 3 (ss 36-54) Audit of entities connected with local authorities

Section 36 provides that the relevant audit authority may appoint a person to carry out audit functions in relation to a local authority entity which meets certain qualifying criteria. By virtue of s 37, a local authority must notify the entity and the relevant audit authority if an entity meets, or ceases to meet, the qualifying conditions or ceases to be connected with the authority. Under s 38, the audit authority may appoint a person to carry out an audit of a local authority entity where the entity appears to the audit authority to meet the qualifying criteria. Where an appointed auditor dies, is dismissed, or is unable or unwilling to act, the audit authority may appoint a replacement auditor for that financial year: s 39. Section 40 provides that, unless the entity otherwise requests, the audit authority must not make an appointment if the entity appears to be exempt from statutory audit. Section 41 specifies who is eligible for appointment as an auditor. The terms of appointment for an auditor are set out by s 42. Where an audit authority appoints an auditor to an entity, s 43 provides that the entity may also appoint that same auditor as its statutory auditor under the Companies Act 2006 Pt 16 (ss 475-539) or the Friendly and Industrial and Provident Societies Act 1968 s 4. The 2009 Act s 44 applies when the entity does not wish to exercise the power in s 39 and instead chooses to appoint a different auditor as its statutory auditor, or where the entity exercises the power in s

39 but then terminates the appointment, so as to provide that the audit's authority's appointed auditor has the same powers as in the 2006 Act or the 1968 Act to enable the auditor to make a report to the company, partnership or society on the annual accounts. The 2009 Act ss 45-49 provide the powers for an auditor appointed under Ch 3 to make a report in the public interest. By virtue of s 50, a fee must be paid by the entity to the appointing audit authority when an auditor discharges any functions under ss 44-49. Section 51 sets out the power of the audit authority to request information relating to the accounts audited by the auditor and any other document or information relating to the entity, which would have been available to the auditor under the powers he had. By virtue of s 52, a company which is a subsidiary of a Passenger Transport Executive is to be regarded as connected with the Integrated Transport Authority for the areas for which the executive is established. Section 53 makes general provision in respect of regulations, and s 54 deals with interpretation.

Part 3 (ss 55-68) Local government boundary and electoral change

Section 55 establishes the Local Government Boundary Commission for England as a separate corporate body, and Sch 1 contains the detailed provisions for the constitution and administration of the new body. Section 56 provides that the Local Government Boundary Commission for England must from time to time conduct a review of electoral arrangements of each principal council in England and recommend whether a change should be made to the electoral arrangements for an area, and introduces Sch 2, which sets out the criteria that the Local Government Boundary Commission for England must have regard to when conducting electoral reviews. Under s 57, a power is provided for the Local Government Boundary Commission for England to conduct a review of the area of a principal council, at that council's request, with a view to making recommendations as to whether each electoral area in the area of the principal council should return only one member. The procedure which the Local Government Boundary Commission for England must follow when conducting electoral reviews under s 53 is set out by s 58. By virtue of s 59, the Local Government Boundary Commission for England is provided with the power to make an order to give effect to all or any of the recommendations which it makes following a review of electoral arrangements for a local government area. Various functions are transferred from the Electoral Commission and the Boundary Committee for England to the new Local Government Boundary Commission for England by s 60. Section 61 abolishes the Electoral Commission's duty to establish a Boundary Committee for England and repeals the Political Parties, Elections and Referendums Act 2000 ss 14, 15. The Electoral Commission is placed under a duty by the 2009 Act s 62 to produce one or more schemes for the transfer of property, rights and liabilities from the Electoral Commission to the Local Government Boundary Commission for England. Section 63 provides that anything done by the Boundary Committee for England or by the Electoral Commission, in relation to structural or boundary changes or electoral arrangements, may be treated as having been done by the new Local Government Boundary Commission for England. Section 64 introduces Sch 3, which makes modifications to the Local Government Act 1992. Under the 2009 Act s 65, the process set out for the review by the Boundary Committee for England of the boundaries of local government areas is amended to enable the new Local Government Boundary Commission for England to consider whether consequential changes should be made to electoral arrangements as part of the same review. Provisions which relate to the defunct Local Government Commission for England are repealed by s 66. Section 67 gives effect to Sch 4, which contains amendments consequential on provision made in Pt 3 and gives the Secretary of State a power by order to amend, repeal or revoke enactments for the purposes of making further consequential provisions in relation to any provisions within Pt 3. Section 68 deals with interpretation.

Part 4 (s 69) Local authority economic assessments

Section 69 requires principal local authorities to prepare an assessment of the economic conditions of their area.

Part 5 (ss 70-87) Regional strategy

Section 70 provides for a regional strategy in each region other than London, which must set out policies in relation to sustainable economic growth, development and the use of land within the region and can include different policies for different areas within the region. By virtue of s 71, the participating authorities in each region, other than London, must make a scheme for the establishment and operation of a body known as a 'Leaders' Board'. Under s 72, the regional development agency and local authorities' Leaders' Board for the region, are, jointly, the 'responsible regional authorities' referred to in Pt 5, and if there is not a Leaders' Board the regional development agency will act alone. In accordance with s 73, the bodies responsible for regional strategy are required to exercise their functions with the objective of contributing to the achievement of sustainable development and having regard to the desirability of achieving good design. Section 74 gives the responsible regional authorities a duty to keep the regional strategy and relevant matters under review and explains when a draft revision is to be prepared either of part or the whole of the strategy. The responsible regional authorities are required by s 75 to prepare, publish and comply with a statement setting out their policies for involving interested persons when preparing a draft revision of a regional strategy. Section 76 provides for the responsible regional authorities to arrange for an examination in public into the draft revision to be held by a person appointed by the Secretary of State. The matters that the responsible regional authorities must take into account when preparing a revision are set out by s 77. Once the responsible regional authorities have prepared and published a draft revision of the regional strategy and the sustainability appraisal report, s 78 requires them to submit these to the Secretary of State, who can then choose either to approve the draft revision as it stands or to modify it before approving it. Section 79 sets out the Secretary of State's reserve power to revise a regional strategy in whole or in part, where the responsible regional authorities fail to do so at the time specified in the regulations or directions. The Secretary of State's power to make regulations for procedural matters in connection with the revisions of regional strategies is set out by s 80. Section 81 imposes duties on the responsible regional authorities to implement and monitor the regional strategy. Under s 82, until a regional strategy is revised, the statutory development plan for an area will only consist of the policies that were previously in the regional spatial strategy. Section 83 requires regional development agencies to have regard to the regional strategy in exercising their functions. By virtue of s 84, the Secretary of State has the power to give guidance and directions in relation to the exercise of functions under Pt 5. Section 85, Sch 5 make consequential provision. Section 86 provides that regulations under Pt 5 are to be made by statutory instrument, and s 87 deals with interpretation.

Part 6 (ss 88-120) Economic prosperity boards and combined authorities

Section 88 provides that the Secretary of State can make an order establishing an Economic Prosperity Board ('EPB') for an area and specifies the conditions that need to be met for an area to be capable of designation as an EPB's area. Under s 89, the Secretary of State may by order make provision in relation to an EPB about the membership of the EPB, the voting powers of the members of the EPB, and the executive arrangements of the EPB. Section 90 sets out the provision which must be included in an order made under s 89 that deals with the number and appointment of members of an EPB. By virtue of s 91, the Secretary of State is allowed to make an order that provides for functions of a county council or district council to be exercisable by the EPB. The Secretary of State is allowed by s 92 to set out how the EPB will be funded. Under s 93, an EPB is required to keep a general fund whereby all receipts of the EPB must be carried to that fund and all liabilities falling to be discharged by the EPB must be discharged out of that

fund. Section 94 provides that an existing EPB can pass a resolution to change its name. By virtue of s 95, the Secretary of State is allowed to make an order changing the boundary of an existing EPB's area. The Secretary of State is allowed to make an order to dissolve an EPB's area and abolish the EPB: s 96. Section 97 provides that any two or more of the specified authorities may review the effectiveness and efficiency of arrangements to promote economic development and regeneration within the geographical area covered by the review. Under s 98, if two or more of the councils that have conducted a review under s 97 conclude that the establishment of an EPB for an area would be likely to improve the exercise of statutory functions relating to economic development and regeneration and economic conditions within the area, then they have the power to prepare and publish a scheme for the establishment of an EPB for the area. In accordance with s 99, the Secretary of State may make an order establishing an EPB for an area if, having had regard to a scheme prepared and published under s 98, the Secretary of State considers that the establishment of an EPB for an area is likely to improve both the exercise of statutory functions relating to economic development and regeneration in the area and the economic conditions in the area. By virtue of s 100, one or more of the specified authorities is allowed to review an EPB matter. Section 101 provides that, if one or more of the authorities who have concluded a s 100 review conclude that the exercise of economic development and regeneration functions, or economic conditions, in an existing or proposed area of an EPB would be likely to be improved by the making of an order under any one or more of ss 89, 91, 92, 95 and 96, then those authorities have the power to prepare and publish a scheme proposing how this should be done. The requirements applying to the Secretary of State's power to make orders under ss 89, 91, 92, 95 and 96 in relation to an existing EPB are set out by s 102. By virtue of s 103, the Secretary of State can make an order establishing a combined authority for an area which meets certain conditions. The Secretary of State is allowed by s 104 to make an order about the constitutional arrangements and functions of an individual combined authority. By virtue of s 105, the Secretary of State may make in relation to a combined authority any provision that may be made in relation to an EPB under s 91. Section 106 allows the Secretary of State to make an order changing the boundary of the area of an existing combined authority. The Secretary of State is allowed by s 107 to make an order to dissolve a combined authority's area and abolish its combined authority. Under s 108, any two or more of the specified authorities may review the effectiveness and efficiency of transport, and of the arrangements to promote economic development and regeneration, within the geographical area covered by the review. If two or more of the authorities who have conducted a s 108 review conclude that the establishment of a combined authority for an area would be likely to improve the exercise of statutory functions relating to transport and economic development and regeneration, the effectiveness and efficiency of transport in the area, and the economic conditions in the area, by virtue of s 109 the authorities may prepare and publish a scheme for the establishment of a combined authority for the scheme area. Section 110 specifies that the Secretary of State may make an order establishing a combined authority for an area if, having regard to the prepared and published scheme, the Secretary of State considers that the establishment of a combined authority is likely to improve the exercise of statutory functions relating to transport and the effectiveness and efficiency of transport in the area as well as the exercise of statutory economic development and regeneration functions in the area and the economic conditions in the area. Under s 111, one or more of the authorities specified is allowed to review a 'combined matter'. By virtue of s 112, authorities are able to prepare a scheme if one or more of the authorities who have conducted a s 111 review conclude that the exercise of statutory transport or economic development and regeneration functions, the effectiveness and efficiency of transport, or the economic conditions in an existing or proposed area of a combined authority would be likely to be improved by the making of an order under any one or more of ss 104-107. The requirements applying to the Secretary of State's power to make orders under ss 104-107 in relation to an existing combined authority are set out by s 113. Section 114 provides that the Secretary of State may make incidental, consequential, transitional or supplementary provision in support of an order made under Pt 6. Under s 115, the Secretary of State may make provision by order for the transfer of property, rights and liabilities for the purpose of, or in

consequence of, an order under Pt 6. By virtue of s 116, the Secretary of State is allowed, by order, to make provision in consequence of any provision made by Pt 6. Section 117 sets out the procedure for making orders under Pt 6. Under s 118, the Secretary of State can issue guidance about anything which could be done under or by virtue of Pt 6 by a specified authority. Section 119 introduces Sch 6, which makes a number of amendments to apply provisions of local government and transport law to EPB's and combined authorities. Section 120 deals with interpretation.

Part 7 (ss 121-137) Multi-area agreements

Section 121 defines a multi-area agreement, and s 122 defines 'local authority' for the purpose of Pt 7. A list of public bodies and persons that will be 'partner authorities' for the purpose of a multi-area agreement are set out by s 123. By virtue of s 124, any group of two or more local authorities may approach the Secretary of State and request that the Secretary of State direct a multi-area agreement to be prepared for their area and submitted to the Secretary of State. Section 125 provides for the Secretary of State, in response to a request made under s 124, to direct the responsible authority to prepare and submit a draft multi-area agreement. Section 126 places certain duties on the responsible authority and other local and partner authorities where a direction has been issued under s 125, following a request under s 124. Provision is made by s 127 for the Secretary of State to approve, require modifications to or reject a draft multi-area agreement that is submitted in accordance with a direction issued under s 125. Section 128 provides for a multi-area agreement that is prepared through procedures other than following a direction from the Secretary of State under s 125 to be submitted with a request that the Secretary of State approve it. Under s 129, the Secretary of State is able to approve a multi-area agreement submitted under s 128. A duty is placed by s 130 on all local and partner authorities for the area covered by a multi-area agreement approved by the Secretary of State under ss 127 or 129 to have regard, when exercising their functions, to each improvement target in the agreement that relates to them. Section 131 defines who the responsible authority is and provides a mechanism for this to be changed by the local authorities to whom improvement targets in a multi-area agreement relate, with the agreement of the Secretary of State. A mechanism is provided by s 132 for a multi-area agreement that has been approved by the Secretary of State to be amended. Section 133 places equivalent duties on the responsible authority to consult and co-operate and have regard to guidance, and on other local and partner authorities to co-operate and have regard to guidance, when preparing a revision proposal as is placed on them when they are preparing a draft multi-area agreement by s 126. In accordance with s 134, the Secretary of State may approve or reject a revision proposal that is submitted by the responsible authority. A duty is placed on the responsible authority by s 135 to publish information about the multi-area agreement and any subsequent changes that are made to it through a revision proposal but leaves the decision as to what information is to be published and the manner of publication to the responsible authority. Under s 136, the Secretary of State is required to consult representatives of local government and, if appropriate, other people with an interest in multi-area agreements before issuing the guidance that responsible, local and partner authorities will have to have regard to in preparing agreements and revision proposals. Section 137 deals with interpretation.

Part 8 (ss 138-145) Construction contracts

Section 138 substitutes a new power allowing the Secretary of State and Welsh Ministers to disapply, by order, any or all of the provisions of the Housing Grants, Construction and Regeneration Act 1996 Pt 2 (ss 104-117) in relation to descriptions of construction contract specified in the relevant order. By virtue of the 2009 Act s 139, the original limitation of the 1996 Act Pt 2 to contracts which were in writing is removed, but it is prescribed that various matters must nonetheless be in writing. A provision to facilitate the correction of clerical or

typographical errors in an adjudicator's decision is introduced by s 140. Section 141 provides that any contractual provision by the parties to a construction contract concerning the allocation between them of costs relating to an adjudication is ineffective unless certain conditions apply. Section 142 addresses the issue of making periodic payments under a construction contract conditional on obligations under another contract, and the issue of making the date a payment becomes due dependent on the giving of a notice by the payer of the sum the payer proposes to pay. Section 143 amends the original provisions of the 1996 Act relating to the notices which a payer gives of the sum which the payer proposes to pay and introduces provisions relating to the giving of notices by the payee. A statutory requirement to pay sums specified in such notices is introduced by the 2009 Act s 144. Section 145 amends the provisions relating to a contractor's right to stop working when the contractor has not been paid so as to put it beyond a doubt that a contractor may stop carrying out some, and not simply all, of the work in such a case.

Part 9 (ss 146-150) Final

Section 146 introduces Sch 7, which contains various repeals. Sections 147-150 deal with extent, commencement and the short title.

Amendments, repeals and revocations

Subscribers should note that the lists below mention repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. Please also note that these lists are not exhaustive.

Specific provisions of a number of Acts are amended, added or repealed. These include: Local Government Act 1972 ss 248, 249, Sch 28A; Housing Grants, Construction and Regeneration Act 1996 ss 106A, 107, 108, 108A, 110, 110A, 110B, 111, 112; Regional Development Agencies Act 1998 s 7; Local Government Act 2000 s 21ZA; Government of Wales Act 2006 Sch 5; Local Government and Public Involvement in Health Act 2007 ss 8, 10-12, 123; and Housing and Regeneration Act 2008 s 278A.

Halsbury's Laws of England/STOP PRESS/MARINE AND COASTAL ACCESS ACT 2009

MARINE AND COASTAL ACCESS ACT 2009

The Marine and Coastal Access Act 2009 makes provision in relation to marine functions and activities; makes provision about migratory and freshwater fish; makes provision for and in connection with the establishment of an English coastal walking route and of rights of access to land near the English coast; enables the making of Assembly Measures in relation to Welsh coastal routes for recreational journeys and rights of access to land near the Welsh coast; makes further provision in relation to Natural England and the Countryside Council for Wales; makes provision in relation to works which are detrimental to navigation; and amends the Harbours Act 1964. The Act received the royal assent on 12 November 2009 and the following provisions came into force on that day: ss 316-320, 322-325, Sch 5 (in part). Further provisions came into force on 12 January 2010: ss 1-3, 14-22, 24, 26-28, 31, 32-40, 42-64, 65-84 (England), 190-216, 217 (in part), 220-222, 223 (in part), 224-232, 233 (in part), 235, 237-239, 243-262, 264-313, 315, 321 (in part), Schs 1-3, 16 (in part), 17, 18, 21, 22 (in part): s 324, SI 2009/3345. Further provisions came into force on 1 April 2010: ss 9-13, 23, 25, 29, 30 and 234,

Sch 8 paras 7, 8, and Sch 22 (in part) (SI 2010/298). Further provisions come into force on 1 January 2011, so far as not already in force: ss 215-233, Sch 16 and Sch 22 Pt 5 (SI 2010/298). The remaining provisions come into force on a day or days to be appointed. For details of commencement, see the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet.

Part 1 (ss 1-40) The Marine Management Organisation

Chapter 1 (ss 1-3) Establishment

Section 1 establishes a body to be known as the Marine Management Organisation ('MMO'), and introduces Schs 1, 2, which make further provision as to the status and constitution of the MMO. The MMO is to act as the United Kingdom Government's strategic delivery body in the marine area, and s 2 sets out the MMO's general objective in relation to its marine functions, which is to ensure that activity in its marine area is managed, regulated and controlled with the objective of making a contribution to the achievement of sustainable development. The Secretary of State is to set objectives and performance indicators for the MMO which it must endeavour to meet: s 3.

Chapter 2 (ss 4-13) Licensing of fishing boats

Section 4 transfers to the MMO the function of the Secretary of State in relation to the granting of fishing licences within British fishery limits. Section 5 provides for the MMO to be subject to a duty to vary a licence following a successful appeal against certain provisions in the licence restricting the amount of time that a vessel may spend at sea. The functions of the Secretary of State in licensing vessels involved in the trans-shipment of fish are also transferred to the MMO by virtue of s 6. Section 7 makes provision supplementary to ss 4 and 6. The functions of the Secretary of State relating to the authorisation of fishing operations for scientific and other purposes are transferred to the MMO by s 8, and the functions of the Secretary of State in granting licences in England and the English inshore region for the killing or taking of seals are transferred to the MMO by s 9. Section 10 provides that the powers under the Wildlife and Countryside Act 1981 s 16 to grant licences in certain circumstances for otherwise prohibited activities are to be exercised by the MMO, instead of the Secretary of State or Natural England, in the case of any such activities in the sea adjacent to England that lies seaward of mean low water mark out to 12 nautical miles. The 2009 Act s 11 amends the Sea Fisheries (Wildlife Conservation) Act 1992, to place the MMO under the same duty as the Secretary of State, when discharging any sea fisheries functions, to have regard to the conservation of marine flora and fauna and to try to achieve a reasonable balance between that consideration and any other considerations to which it is required to have regard. By virtue of s 12, certain of the functions of the Secretary of State in issuing consents under the Electricity Act 1989 s 36 relating to the construction, extension and use of offshore generating stations are also transferred to the MMO, and by virtue of the 2009 Act s 13, the MMO will also be able to issue notices under the Energy Act 2004 s 95 declaring safety zones around those offshore generating stations (described as renewable energy installations) for which it issues those consents.

Chapter 3 (ss 14-22) Agreements involving the MMO for the exercise of functions

Section 14 allows the Secretary of State to enter into agreements with the MMO authorising the MMO to perform marine functions currently performed by the Secretary of State. With the approval of the Secretary of State, s 15 enables the MMO, to make agreements with bodies listed in s 16 authorising those bodies to perform the MMO's functions on its behalf. Those functions which may not be delegated to the MMO or an eligible body are set out in s 17. By virtue of s 18, the maximum amount of time that an agreement between the Secretary of State and the MMO or an agreement between the MMO and an eligible body may last is 20 years. Section 19 provides that an agreement may still be entered into with a body which is already involved with the function in some way. Additional provision in relation to agreements with

harbour authorities which are local authorities is made by s 20. Section 21 makes supplementary provision with respect to agreements, and s 22 is interpretational.

Chapter 4 (ss 23-40) Miscellaneous, general and supplemental provisions

Section 23 amends certain sections of the Planning Act 2008 to set out the MMO's role in relation to development consents. The MMO has powers, by virtue of the 2009 Act s 24, to undertake research on matters relevant to its functions or its general objective, either by itself or in association with others, and to commission or support others to undertake such research. The MMO's duties and powers to provide advice and assistance, and the use of training facilities, to the Secretary of State, public bodies and any other person, are specified by s 25. Section 26 enables the MMO to publish documents and provide information about anything relating to its general objective or any of its functions, and s 27 enables the MMO to make a reasonable charge for any services it provides (on a cost-recovery basis). The MMO is to be accountable to the Secretary of State, who will from time to time require, in writing, information from the MMO relating to the performance of its functions: s 28. The MMO is to have responsibilities for enforcement in the marine area, including bringing prosecutions where appropriate, and s 29 makes provision with respect to the powers of the MMO to pursue criminal proceedings and proceedings for the recovery of monetary penalties imposed under the Act. By virtue of s 30, the MMO may continue prosecutions that have already been started by the Secretary of State, including prosecutions started by the Marine and Fisheries Agency, where those prosecutions are for offences related to functions transferred to the MMO or are for offences under fisheries legislation. Section 31 allows the MMO to take action which will help it to exercise its functions and meet its general objective, such as borrowing money, holding property, and investing money. Section 32 enables the Secretary of State to make the appropriate funds available to the MMO by way of grant, and s 33 allows the MMO to borrow money as necessary to enable it to carry out its functions. By virtue of s 34, the MMO's ability to borrow is limited to £20m, although the Secretary of State may increase this (up to £80m) by order, subject to approval by the House of Commons. Section 35 enables the Secretary of State to lend money to the MMO and makes the loan subject to any appropriate repayment conditions. The Secretary of State may guarantee loans, interest and other financial obligations of the MMO: s 36. Under s 37, the Secretary of State may, following consultation, give general or specific directions to the MMO regarding the exercise of its functions, including directions in relation to international agreements to which the United Kingdom or European Union is a party. Section 38 provides for the Secretary of State to issue guidance to the MMO regarding the exercise of its functions, and the MMO must have regard to any guidance issued. Section 39, Sch 3 enable the Secretary of State to make schemes to transfer to the MMO property, rights and liabilities of the Department for Environment, Food and Rural Affairs (including those of the Marine and Fisheries Agency), other government departments, ministers and statutory bodies, and also allows the transfer of any property, rights and liabilities from the MMO to ministers, government departments and statutory bodies. The Secretary of State may require a government department, minister or other statutory body to make staff, premises or other facilities available to the MMO on a temporary basis: s 40.

Part 2 (ss 41-43) Exclusive Economic Zone, UK marine area and Welsh zone

Section 41, Sch 4 allow for the declaration of an Exclusive Economic Zone to replace the existing zones, namely the areas within British fishery limits, the Renewable Energy Zone, the Pollution Zone, and the Gas Importation and Storage Zone, in order to simplify the management of the United Kingdom's offshore maritime areas. Section 42 defines the UK marine area for the purposes of managing the United Kingdom's maritime space; it includes those areas of the sea and seabed over which the United Kingdom enjoys sovereignty in addition to those offshore areas over which the United Kingdom is able to assert its sovereign rights. The Government of Wales Act 2006 s 158(1) is amended by the 2009 Act s 43 to insert a definition of the Welsh zone.

Part 3 (ss 44-64) Marine planning

Chapter 1 (ss 44-48) Marine policy statement

Section 44 describes what is meant by a 'marine policy statement' ('MPS') and defines the MPS as a document that is prepared and adopted by the policy authorities, in accordance with the process laid down in Sch 5, and which sets out their policies for contributing to the sustainable development of the UK marine area. By virtue of s 45, the policy authorities may prepare an MPS by acting jointly; an MPS may also be adopted by the Secretary of State acting jointly with only one or two of the other policy authorities, or alone if necessary. Policy authorities must review the MPS whenever they consider it appropriate to do so: s 46. Section 47 enables an MPS to be amended, but only the policy authorities which originally prepared and adopted an MPS may amend it. If any one of the policy authorities which originally adopted an MPS comes to the conclusion that the MPS no longer reflects their policy, and that authority does not want to, or cannot, correct the problem by making an amendment to the MPS, s 48 enables the authority to withdraw from the MPS by first notifying the other policy authorities of their intention, and then placing a notice in the London, Belfast and Edinburgh Gazettes.

Chapter 2 (ss 49-54) Marine plans

Section 49 identifies each of the component 'regions' within the UK marine area for the purposes of identifying who will be responsible for planning in that region, and s 50 sets out which marine plan authorities are to have responsibility for the different regions of the UK marine area. Provision is made by s 51 for the creation of marine plans, and certain basic requirements as to their content and the way in which they are to be prepared are set out. A marine plan authority may amend a marine plan, and any such amendment must be prepared and adopted in accordance with Sch 6 in exactly the same way as the original plan: s 52. If the marine plan authority comes to the conclusion that there is a problem with the plan which it does not want to, or cannot, rectify by making an amendment, a marine plan may be withdrawn: s 53. Section 54 requires the marine plan authorities to keep under review matters which may affect their functions of identifying marine plan areas, and preparing plans for them.

Chapter 3 (ss 55-57) Delegation of functions relating to marine plans

Section 55 enables a marine plan authority to direct another public body to carry out some of its marine planning functions, by giving it a direction, and s 56 contains a number of additional rules about directions issued under s 55. Where a marine plan authority has delegated some of its planning functions by directions under s 55, s 57 enables the marine plan authority to give further directions to a public body to which it has delegated functions, setting out how those functions should be performed.

Chapter 4 (ss 58-61) Implementation and effect

Section 58 makes provision about the effect which 'the appropriate marine policy documents' are to have on the taking of certain decisions by public authorities; the documents that may be appropriate marine policy documents are the MPS and any marine plans. The rules for determining whether the MPS or any particular marine plan is an appropriate marine policy document in any article case are set out in s 59 (as read with s 60). By virtue of s 61, each marine plan authority must monitor and report on the effects and effectiveness of its existing plans, and report every six years until 2030 on the way it has used, and intends to use, its marine planning powers.

Chapter 5 (ss 62-64) Miscellaneous and general provisions

Section 62 sets out how people may challenge the content of marine policy documents, or amendments to them, in court, and s 63 sets out the powers of a court hearing a challenge to the validity of a marine policy document. Section 64 deals with interpretation.

Part 4 (ss 65-115) Marine licensing

Chapter 1 (ss 65-73) Marine licences

By virtue of s 65, anyone undertaking an activity mentioned in s 66 will need to obtain a licence from the appropriate licensing authority, subject to any exemption provided for in the Act. The licensing authority, by virtue of ss 67, 68, may specify in what form an application for a marine licence should be submitted and may charge an application fee. When determining an application for a marine licence the licensing authority must have regard to the need to protect the environment, the need to protect human health, the need to prevent interference with legitimate uses of the sea, and such other matters as the authority thinks relevant (s 69), and the appropriate licensing authority may cause an inquiry to be held in connection with the determination of an application for a marine licence (s 70). The licensing authority may, by virtue of s 71, impose conditions on any licence it grants. Under s 72, the licensing authority may vary, suspend or revoke a licence in certain cases by notice. Each appropriate licensing authority is under an obligation to establish a mechanism through which an applicant for a marine licence may appeal against its decision to refuse to grant a licence or against any of the conditions attached to one: s 73.

Chapter 2 (ss 74-84) Exemptions and special cases

By virtue of s 74, the licensing authority may, by order, either exempt activities from the need for a licence completely, or specify conditions which, if met, will mean the activity may be exempted from the need for a licence. Section 75 provides exemptions for certain dredging activities. Marine licensing as described in Pt 4 does not apply to any dredging done, in the exercise of specified functions, in the Scottish zone for the purpose of extracting minerals: s 76. Section 77 exempts from the need to obtain a marine licence certain activities licensable under the Petroleum Act 1998 or the Energy Act 2008. Where a marine licence is required and an application for a harbour order has been, or is likely to be, made, the 2009 Act s 78 provides that in such cases the authority granting, or likely to grant, the harbour order, in conjunction with the marine licensing authority, if it is a different body, may issue a notice to the applicant stating that both the application for a harbour order and the application will be subject to the same administrative procedure. Where both a marine licence and consent under the Electricity Act 1989 s 36 (in relation to offshore generating stations) are required, the 2009 Act s 79 provides that the authority to determine consent under the 1989 Act s 36, in conjunction with the marine licensing authority, if it is a different body, may issue a notice to the applicant stating that both the application for a s 36 consent and the application for a marine licence will be subject to the same administrative procedure. The 2009 Act s 80 removes the obligation for an operator to apply to the Secretary of State for a licence under the Electronic Communications Code as set out in the Telecommunications Act 1984 Sch 2. In the case of certain submarine cables, the 2009 Act s 81 restricts the application of the marine licensing regime as respects their laying or maintenance. In cases where an activity requires a licence under the Act, and would otherwise also require consent under the Water Resources Act 1991 s 109, the Environment Agency may remove the need for separate consent under the 1991 Act by issuing a notice to that effect to the applicant: 2009 Act s 82. In cases where an activity requires a licence under the 2009 Act, and would otherwise also require consent from the Admiralty under any local legislation, the Secretary of State may remove the need for that separate consent by issuing a notice to that effect: s 83. In cases where an activity requires a licence under the 2009 Act, and would otherwise also require consent from the Environment Agency under any of its byelaws under the 1991 Act Sch 25, the Environment Agency may remove the need for that separate consent by issuing a notice to that effect: 2009 Act s 84.

Chapter 3 (ss 85-97) Enforcement

By virtue of s 85, it is an offence for a person to carry out a licensable activity without a licence or to do so in a manner that breaches any conditions of a licence. However, if a person undertakes a licensable activity without a licence but does so for the purpose of securing the safety of a vessel, aircraft or structure, or for the purpose of saving life, s 86 provides a defence against a charge under s 85 provided certain conditions are fulfilled. Section 87 provides a defence against such a charge where the activity is for the purpose of carrying out emergency works to electronic communications. A further defence to the undertaking of certain activities without a licence is provided by s 88. It is an offence for a person who is applying for a new licence, or for the variation or transfer of an existing licence or who, in complying, or purporting to comply, with obligations imposed either by Pt 4 or a licence, knowingly or recklessly supplies false or misleading information, or intentionally fails to disclose any material particular: s 89. Under s 90, a person carrying on a licensed activity in a manner that breaches the conditions of the licence may be issued with a notice requiring compliance. A person who has carried on or is in the process of carrying on a licensable activity, either without a licence or with a licence but in a manner that breaches the conditions of the licence and who has caused, is causing or is likely to cause any of the results described, may be issued with a remediation notice: s 91. Section 92 provides that all compliance and remediation notices must be in writing, must be served on the person carrying on or in control of the activity in question, and may, if a licence has been granted for that activity to another person, also be served on the licensee. Section 93 enables the licensing authority by order to grant to the appropriate enforcement authority the power to issue a fixed monetary penalty to a person in relation to an offence under Pt 4. Certain minimum requirements, that the licensing authority must ensure that any fixed monetary penalty regime includes, are specified in s 94. By virtue of s 95, the licensing authority may by order grant to the appropriate enforcement authority the power to issue a variable monetary penalty to a person in relation to an offence under Pt 4. Section 96 specifies certain minimum requirements that the licensing authority must ensure that any variable monetary penalty regime includes. Further provision in relation to the civil sanctions that may be imposed under Pt 4 is made by s 97, Sch 7.

Chapter 4 (ss 98-100) Delegation

Section 98 provides that the licensing authority may by order delegate any of its delegable marine licensing functions (as defined) to such other body as the licensing authority considers appropriate, and s 99 enables further provision to be made in an order concerning the exercise of any delegated functions. Where a licensing authority has delegated any of its licensing or enforcement functions under s 98, s 100 enables the licensing authority to give further directions to a person to whom it has delegated functions, setting out how those functions should be performed.

Chapter 5 (ss 101-115) Supplementary

By virtue of s 101, each licensing authority must maintain a register of information relating to applications and licences for which it is responsible and must make the register available to the public. An enforcement authority may issue a stop notice to a person prohibiting the person from carrying on a licensable marine activity if that activity is causing or is likely to cause serious harm to the environment or to human health or is causing or is likely to cause serious interference with legitimate uses of the sea: s 102. Stop notices must be in writing, must be served on the person carrying on or in control of the activity and, if a licence has been granted for that activity to another person, may also be served on the licensee: s 103. Sections 104, 105 make provision for emergency safety notices to be issued to a person if it appears that serious interference with legitimate uses of the sea is occurring, or is likely to occur, as a result of licensable works; the notice may require the provision of lights, signals or other aids to navigation or the stationing of guard ships until the serious interference, or threat of interference, is removed. Where it appears that a licensable marine activity has been carried on without a licence or in breach of the conditions of a licence, the appropriate licensing authority may carry out any works that appear to be necessary or expedient for the purpose of

protecting the environment or human health, preventing interference with legitimate uses of the sea, preventing or minimising, or remedying or mitigating the effects of, any harm to the environment or any interference with legitimate uses of the sea, or restoring the condition of any place affected by any such harm or interference: s 106. At any person's request, the licensing authority may, by virtue of s 107, perform tests on substances for their effect on the marine environment, and the authority may charge for that testing. Provision as to appeals against notices under Pt 4 is made by s 108. In any proceedings for an offence under Pt 4, it is a defence under s 109 to prove that the person charged took all reasonable precautions and exercised all due diligence to avoid the commission of the offence. Proceedings for an offence under Pt 4 may be taken, and the offence may for all incidental purposes be treated as having been committed, in any part of the United Kingdom even if it was in fact committed at sea: s 110. Section 111 deals with application to the Crown, and ss 112, 113, Schs 8, 9 make amendments and transitional provisions. Section 113 contains the rules for determining who is the appropriate licensing authority for any area, and ss 114, 115 provide definitions of terms used in Pt 4.

Part 5 (ss 116-148) Nature conservation

Chapter 1 (ss 116-147) Marine conservation zones

Section 116 provides a power for the Welsh Ministers, Scottish Ministers and the Secretary of State to designate, as the appropriate authority, areas as marine conservation zones ('MCZs') by means of local orders. Section 117 sets out the circumstances in which ministers may designate an MCZ. Further provision as to orders designating MCZs is made by s 118, including the requirement to specify the boundaries of the designated area. By virtue of s 119, ministers must carry out public consultation before designating an MCZ, and s 120 makes provision for ministers to publish notice of the making of an order. Section 121 allows ministers to hold hearings before deciding whether to make an order under s 116 to designate an MCZ, and s 122 allows an order designating an MCZ to be amended or revoked by a further order. By virtue of s 123, the appropriate authority is under a duty to designate MCZs so as to contribute to the creation of a network of marine sites. The Secretary of State, the Welsh Ministers and the Scottish Ministers must report to Parliament, the Welsh Assembly and the Scottish Parliament, as appropriate, on progress in designating a network of MCZs: s 124. Section 125 places a general duty on public authorities to carry out their functions in the manner that they consider best furthers, or least hinders, the conservation objectives set for MCZs, and s 126 requires a public authority to inform the relevant statutory nature conservation body if it believes a proposed activity will hinder the achievement of the conservation objectives of an MCZ. Powers and duties are conferred by s 127 on the statutory nature conservation bodies (Natural England, the Joint Nature Conservation Committee and the Countryside Council for Wales) to give advice or guidance to public authorities in respect of MCZs. The relevant statutory nature conservation body is able, by virtue of s 128, to obtain an explanation if it thinks a public authority has failed to exercise its functions to further, or where permissible, least hinder, the conservation objectives of an MCZ, failed to notify the appropriate conservation body where it believes that an act requiring authorisation may have a significant risk of hindering the achievement of the conservation objectives of an MCZ, or failed to act in accordance with the guidance provided by the statutory nature conservation body. Section 129 gives the MMO the power to make byelaws to protect MCZs in the English inshore region and help further their conservation objectives; there is no power to make byelaws in the offshore region. The MMO must carry out public consultation before making a byelaw (s 130), and provision is made for emergency byelaws (s 131) and interim byelaws (s 132). Section 133 sets out the administrative and notification requirements in relation to byelaws, whether they are made urgently or not, and interim byelaws. Section 134 gives the Welsh Ministers the power to make conservation orders, in order to protect MCZs in the Welsh inshore region and help further their conservation objectives, and s 135 requires the Welsh Ministers to consult before making a

conservation order, and to publish notice of the making of the order and to ensure that interested individuals are aware of the publication. By virtue of s 136, the Welsh Ministers may make interim orders to protect features where there may be reasons to designate an MCZ and where there is an urgent need to protect the feature. Administrative and notification requirements in relation to Welsh conservation orders, whether made urgently or not, and interim orders, are set out in s 137. Section 138 makes provision for the Secretary of State to hold a hearing before deciding whether to confirm a byelaw or revoke an emergency or interim byelaw, and also makes provision for the Welsh Ministers to hold hearings before deciding whether to make a conservation order or an interim order. Breaching any byelaw or conservation order is an offence: s 139. Section 140 creates a general offence where a person intentionally or recklessly causes damage or harm to the protected features of an MCZ. Section 141 sets out the circumstances in which a person will not be guilty of an offence under s 139 or 140. By virtue of s 142, the Secretary of State or the Welsh Ministers may make an order which confers a power on an enforcement authority to issue fixed monetary penalties for the breach of byelaws or conservation orders. Certain minimum requirements that must be included in any fixed monetary penalty regime are set out in s 143. Section 144 gives effect to the further provisions about fixed monetary penalties set out in Sch 10. Section 145 deals with application to the Crown and s 146, Schs 11, 12 make consequential and transitional provision. Section 147 is interpretational.

Chapter 2 (s 148) Other conservation sites

Section 148 introduces Sch 13 which amends the Wildlife and Countryside Act 1981.

Part 6 (ss 149-193) Management of inshore fisheries

Chapter 1 (ss 149-186) Inshore fisheries and conservation authorities

Section 149 provides for the Secretary of State to establish inshore fisheries and conservation districts ('IFC districts') which are to be established by order and are to consist of one or more local authority areas that have a seashore. By virtue of s 150, there must be an inshore fisheries and conservation authority ('IFC authority') for every IFC district; the IFC authority is a committee, or a joint committee (in the case of more than one local authority), of the local authority or authorities falling within the district. An order establishing an IFC district must provide for the membership of the IFC authority for that district (s 151), and the Secretary of State may amend or revoke an order that established an IFC district (s 152). Each IFC authority is placed under a duty, by s 153, to manage the exploitation of sea fisheries resources in its district. Each IFC authority must exercise its powers to seek to ensure that the conservation objectives of any MCZ in its district are furthered: s 154. Section 155 provides a power for an IFC authority to make byelaws which must be observed in its district, and s 156 sets out a non-exhaustive list of the types of activities for which IFC authorities may make byelaws, including emergency byelaws, to manage sea fisheries resources in their district. By virtue of s 157, an IFC authority may make an emergency byelaw which takes effect without first being confirmed by the Secretary of State. Supplementary provision concerning byelaws is made by s 158, and s 159 allows the Secretary of State to revoke or restrict the application of any byelaw made by an IFC authority where it appears to the Secretary of State that the byelaw is unnecessary, inadequate or disproportionate. Section 160 allows the Secretary of State to make regulations about the procedure to be followed by an IFC authority when making byelaws, including emergency byelaws. Provision as to inquiries is made by s 161, and s 162 provides that the production of a signed copy of a byelaw is conclusive evidence of the byelaw. A person is guilty of an offence if he contravenes any byelaw made by an IFC authority. Where a vessel is used in contravention of a byelaw the master, owner and charterer, if any, will each be guilty of an offence, and liable on summary conviction to a maximum fine of £50,000: s 163. Where a person is convicted of an offence, the court may order forfeiture of any fishing gear used in the commission of the offence or any fish in respect of which an offence was committed: s 164.

Section 165 provides that inshore fisheries and conservation officers ('IFC officers') may be appointed by IFC authorities. The enforcement powers which are available to an IFC officer and the legislation in respect of which they may be exercised are set out in s 166. Section 167 gives an IFC authority the power, with the approval of the Secretary of State, to make an agreement with an 'eligible body' (defined by s 168), authorising the body to perform any of the IFC authority's functions on its behalf. Provision for the review, variation and cancellation of agreements made between IFC authorities and eligible bodies is made by s 169. Section 170 makes provision for cases where a body that is authorised to carry out a function under an agreement is already involved with the function in some way. By virtue of s 171, agreements, and approvals for them, must be in writing and agreements must be published in such a way as to bring them to the attention of persons likely to be affected. Provision is made by s 172 for an IFC authority to take such measures as it considers necessary in order to develop any fishery for sea fisheries resources in its district. Section 173 provides for IFC authorities to enter into arrangements, with or without charge, with another person or body for the provision of services by the IFC authority to that person or body. Section 174 requires an IFC authority to take such steps as it considers appropriate to co-operate with certain other public organisations that have functions relating to the regulation and enforcement of activities in any part of the sea within the IFC district and to co-operate with other IFC authorities that share a boundary with the IFC authority. Under s 175, IFC authorities must collect certain information and provide certain information to the Secretary of State, and under s 176, IFC authorities must keep proper accounts and proper records in relation to those accounts. Every IFC authority must make and publish a plan setting out the authority's main objectives and priorities for the year (s 177), and, as soon as is reasonably practicable after the end of each financial year, must publish a report on its activities in that year (s 178). The miscellaneous powers of an IFC authority are set out in s 179 and include matters necessary for the exercise of any of its other functions and the acquisition or disposal of land or other property. Section 180 establishes the funding arrangements for IFC authorities, and s 181 provides that an IFC authority may bring proceedings under the 2009 Act in its own name as well as bringing or defending any other proceedings in its own name. By virtue of s 182, no member or employee of an IFC authority acting in good faith is liable for anything done in connection with the discharge of the authority's functions. The Secretary of State is required, by s 183, to lay a report before Parliament on the conduct and operation of IFC authorities. Section 184, Sch 14 make minor and consequential amendments, s 185 deals with application to the Crown, and s 186 is interpretational.

Chapter 2 (ss 187, 188) Local fisheries committees

Section 187 repeals the Sea Fisheries Regulation Act 1966, and the 2009 Act s 188 provides for the appropriate national authority to make any provision necessary as a consequence of the repeal of the 1966 Act, including any transitional, consequential, incidental or supplemental provision or savings.

Chapter 3 (ss 189-193) Inshore fisheries in Wales

Section 189 confers power on the Welsh Ministers to make any provision by order which the IFC authorities may make by byelaw, but only to the extent that the Welsh Ministers do not already have the power to make such provision, and s 190 provides that it is an offence for a person or vessel to contravene any provision of an order made under s 189. Section 191 confers various powers on the court following conviction of a person for an offence under s 190. By virtue of s 192, the Welsh Ministers may enter into arrangements, with or without charge, with third parties (private fishery owners and grantees of several and regulating orders) for marine enforcement officers to undertake enforcement activities within those third party fisheries. Miscellaneous amendments to the Coast Protection Act 1949 and the Wildlife and Countryside Act 1981 are made by s 193.

Part 7 (ss 194-234) Fisheries

Chapter 1 (ss 194-201) The Sea Fish (Conservation) Act 1967

The 2009 Act s 194 amends the Sea Fish (Conservation) Act 1967 s 1 to provide for all the current powers available under orders made under that provision to apply to any requirements as to size, rather than minimum size limits only, and for the prohibition on carriage to apply to all relevant British vessels. Section 3 is amended by the 2009 Act s 195 so that fishing restrictions apply equally to persons fishing from the shore of England and Wales as to persons fishing from a boat, and to create new offences for any person fishing from the shore in contravention of any such restrictions and to allow for orders to exempt persons from the restrictions imposed. Section 196 amends the 1967 Act s 4 to enable ministers to specify the amount of the charge for commercial sea fishing vessel licences, to make provision as to how the charge should be determined or to provide that in specified circumstances no charge will be payable. Section 4 is further amended by the 2009 Act s 197 to allow the imposition of conditions in fishing licences for marine environmental purposes. By virtue of amendments made by s 198 to the 1967 Act, orders made under s 5 may now be made in relation to persons fishing from the shore. The 2009 Act s 199 amends the 1967 Act in relation to the penalties for offences. Section 12 is replaced by the 2009 Act s 200 and now provides that where offences under the 1967 Act ss 1-6 have been committed by a body corporate, then any officer, as defined, of the body corporate may be found to be guilty of that offence and liable to proceedings and fines. The 2009 Act s 201, Sch 15 makes further minor and consequential amendments to the 1967 Act.

Chapter 2 (ss 202-214) The Sea Fisheries (Shellfish) Act 1967

The 2009 Act s 202 amends the Sea Fisheries (Shellfish) Act 1967 s 1 to allow for orders to be made in relation to all types of shellfish including those not already listed, without the present requirement for regulations to be made each time the Secretary of State or the Welsh Ministers wishes to add a new type of shellfish to the list. Section 1 is further amended by the 2009 Act s 203 to enable several and regulating orders to be varied or revoked in order for development of the sea shore affected by such orders to be carried out. The 1967 Act s 3 is amended by the 2009 Act s 204 to set out the powers of grantees of regulating orders who have the right to regulate the fishery, and establish that grantees may spend monies collected by way of tolls and royalties for purposes connected with the regulation of the fishery, not just for the improvement of the fishery as currently provided. Section 205 amends the 1967 Act ss 3 and 7 so that the maximum fine that may be imposed by a court is increased to £50,000 in line with that for other fisheries legislation. Section 3 is amended by the 2009 Act s 206 to provide that, where a fishing boat is used in the commission of an offence, the master, owner and charterer, if any, of the boat are each guilty of an offence. The 1967 Act s 3 is also amended by the 2009 Act s 207 to ensure that where a regulating order enables a grantee to impose restrictions or make regulations about the dredging, fishing for and taking of shellfish, the grantee is able to carry into effect and enforce those restrictions and regulations in the same way as may be done for regulations imposed by and restrictions made in the order itself. Amendments made by s 208 to the 1967 Act s 4 allow for the removal of licences from a holder after a single conviction for a breach of licence or of the provisions of the regulating order. The 2009 Act s 209 adds new provision to the 1967 Act to require grantees of regulated fisheries to hold a register of current licence-holders' names and addresses and make it available for inspection free of charge. Section 7 is amended by the 2009 Act s 210 to extend the protection afforded to private oyster beds under that provision to all privately owned shellfish beds for the particular type of shellfish to which their rights of ownership relate. Section 211 amends the 1967 Act in relation to the use of implements of fishing, and amendments made by the 2006 Act s 212 provide exemptions from the offence of taking certain edible crabs and lobsters where a person has authorisation to take such shellfish for scientific purposes. Amendments made by s 213 allow the Secretary of State or the Welsh Ministers to make an order to introduce protection for lobsters under the 1967 Act s 17 independently of any other devolved administration, and

amendments made by the 2009 Act s 214 remove the requirement to appoint an inspector and provide the Secretary of State or the Welsh Ministers with a discretionary power in making decisions on the appointment of an inspector and calling public inquiries.

Chapter 3 (ss 215-233) Migratory and freshwater fish

Section 215 amends the Salmon and Freshwater Fisheries Act 1975 s 1 to add to the list of instruments the use of which is prohibited for taking fish. The 2009 Act s 216 amends the 1975 Act s 2 to extend the prohibition on the use of roe for the purpose of fishing to lampreys, smelt, shad, and to any other specified fish. Section 25 is amended by the 2009 Act s 217 so as to extend the list of kinds of fish to which the licensing system applies to include lampreys, smelt and any fish specified in an order. Amendments made by s 218 to the 1975 Act s 26 allow orders under that provision to be made in respect of any kind of licence issued under s 25. The 2009 Act s 219 adds new provisions to the 1975 Act so as to (1) give the Environment Agency power to authorise a person to use any means (other than a licensable means of fishing) to fish for salmon, trout, eels, lampreys, smelt and freshwater fish, and other specified fish; and (2) make it an offence to fish for or take fish using any means of fishing, other than an instrument for which a licence is required, without an authorisation. Amendments relating to enforcement under the 1975 Act are made by the 2009 Act s 220. New provision added by s 221 to the 1975 Act empowers the appropriate national authority to specify additional species of fish to which ss 1, 2, 25, and 27A and the Salmon Act 1986 s 32 apply, and the 2009 Act s 222 adds new provision to the 1975 Act setting out the procedure for making such an order. The 2009 Act s 223 amends the 1975 Act to give amended definitions for eels and freshwater fish and new definitions for freshwater crayfish and smelt. The Water Resources Act 1991 is amended by the 2009 Act s 224 in relation to the Environment Agency's powers to make fisheries byelaws. The 1991 Act is further amended by the 2009 Act ss 225-227 in relation to emergency procedures for making byelaws, enforcement of byelaws, and compensation for byelaws. Section 228 raises the penalty for committing the offence of taking or destroying fish under the Theft Act 1968 to £5,000. The 2009 Act s 229 extends the offence, under the Salmon Act 1986 s 32, of handling salmon or sea trout in suspicious circumstances to eels, lampreys, smelt, freshwater fish, and other specified fish. The Environment Act 1995 s 6 is amended by the 2009 Act s 230 to extend the duty of the Environment Agency to maintain, improve and develop salmon fisheries, trout fisheries, freshwater fisheries and eel fisheries to include lampreys and smelt fisheries, and fisheries of other specified fish. The Scotland Act 1998 s 111, which relates to Tweed and Esk fisheries, is amended by the 2009 Act s 231. Section 232 allows the appropriate national authority to make regulations to prohibit persons from keeping any fish, introducing any fish into inland waters or removing any fish from inland waters without prior authorisation. Consequential amendments are made by s 233.

Chapter 4 (s 234) Obsolete fisheries enactments

Section 234 repeals six redundant Acts of Parliament relating to sea fisheries and part of another such Act.

Part 8 (ss 235-295) Enforcement

Chapter 1 (ss 235-244) Enforcement officers

Section 235 allows the MMO and the Welsh Ministers to appoint marine enforcement officers ('MEOs'), and s 236 sets out the areas in which and the vessels and installations in relation to which an MEO may exercise his enforcement powers for the purposes of enforcing the marine licensing regime set out in Pt 4. The areas in which and the vessels and installations in relation to which an MEO may exercise his enforcement powers for the purposes of enforcing legislation relating to nature conservation are set out in s 237, and s 238 sets out the areas in which and the vessels and installations in relation to which an MEO may exercise his enforcement powers for the purposes of enforcing sea fisheries legislation. By virtue of s 239, MEOs are

automatically made British seafishery officers ('BSFOs') on appointment but where MEOs are able to exercise common enforcement powers under the Act, they cannot use their BSFO powers. Under s 240, the Secretary of State will be able to appoint persons to enforce Pt 4, to the extent that it relates to the licensing of activities relating to various reserved matters. Section 241 allows the Department of the Environment in Northern Ireland to appoint persons for the purpose of enforcing Pt 4, and s 242 enables Scottish Ministers to appoint persons for the purposes of enforcing licensing under Pt 4 in the Scottish offshore region. Section 243 enables Scottish Ministers to appoint officers with the common powers for the purpose of enforcing s 140, which creates the offence of damaging etc protected features of MCZs, in the Scottish offshore region. Section 244 is interpretational.

Chapter 2 (ss 245-262) Common enforcement powers

Section 245 introduces the purpose of Pt 8 Ch 2, which is to set out the powers available to MEOs and other enforcement officers, and defines key terms. The powers in s 246 enable enforcement officers to board and inspect any vessels and marine installations, subject to the need for a warrant pursuant to s 249 if the vessel or installation is a dwelling, to carry out their functions. The powers in s 247 enable enforcement officers to enter and inspect any premises, subject to the need for a warrant pursuant to s 249, to carry out any relevant functions. Section 248 enables enforcement officers to enter and inspect any vehicle at any time, subject to the need for a warrant pursuant to s 249 if the vehicle is a dwelling; an officer may also require the vehicle to be taken to an appropriate place to be inspected, and may require assistance as necessary from people in the vehicle or the registered keeper. By virtue of s 249, an enforcement officer may not enter a dwelling unless a justice has issued a warrant authorising entry; Sch 17 sets out further provisions relating to warrants. The powers in s 250 allow an enforcement officer, when exercising a power of inspection, to search those premises and examine anything in it, and further allow the officer to stop someone and detain them to perform a search of anything in their possession or control. Section 251 gives enforcement officers the power to require a person on or in the relevant premises being inspected to produce documents or records that they have. An enforcement officer may seize and detain or remove anything found on premises or, where a person has been undertaking an activity in respect of which the officer has enforcement powers, any item in the person's possession or control: s 252. Further provision about seizure is made by s 253. Section 254 allows items seized during an investigation to be kept for as long as is necessary for the investigation and any trial proceedings, unless a photograph or copy would provide sufficient evidence. Under s 255, enforcement officers have powers to use any device to take visual images of anything connected with the relevant premises for evidence in the investigation of a suspected offence. If the officer believes someone has committed an offence, that person may be required to give the officer their name and address: s 256. Section 257 provides that if the officer believes someone has been undertaking an activity which needs a licence, permit, etc, the officer may require that person to show that licence. Where an officer has boarded a vessel or marine structure or entered any premises he may require the attendance of those persons listed: s 258. Section 259 gives enforcement officers the power to direct a vessel or marine installation to the port they consider to be the nearest convenient port and detain it there where an officer believes that an offence has been committed and it would not be practical to carry out their duties without first taking the vessel or marine installation to port and detaining it there, or where the officer believes that the vessel itself is evidence of the commission of an offence and the only way to preserve the evidence is to take it into port. By virtue of s 260, enforcement officers may take other people and anything necessary, including equipment and materials, to assist them in their duties, and by virtue of s 261, enforcement officers and their assistants may use reasonable force wherever necessary to carry out their functions. Section 262 is interpretational.

Chapter 3 (s 263) Licensing enforcement powers

Section 263 enables enforcement officers to require a person to give details of any substance or objects on board a vehicle, vessel, aircraft or marine structure; people may also be required to declare information about substances or objects lost or missing from a vehicle, vessel, aircraft or marine structure.

Chapter 4 (ss 264-287) Fisheries enforcement powers

Section 264 provides enforcement officers with powers to inspect any object found in the sea which it is believed has been or is being used for or in connection with fishing, and, if necessary, to lift the object out of the sea for inspection. The reporting requirements that an enforcement officer must follow after inspecting objects under s 264, are set out in s 265. Provision is made by s 266 for the retention by the relevant authority of any objects seized under s 264. Section 267 sets out arrangements for the disposal of objects seized under s 264 where the relevant authority no longer wishes to retain the object or the relevant authority is required to make the object available for collection. Under ss 268, 269, an enforcement officer may seize fish or fishing gear for the purpose of forfeiture. Section 270 creates an obligation on the enforcement officer who seizes any fish or fishing gear under s 268 or 269 to serve a written notice on every person who appears to the officer to be the owner or one of the owners at the time the fish or gear were seized, and sets out other persons on whom the notice must be served, depending on the location from which the property was seized. The relevant authority is provided with the power, by virtue of s 271, to retain any fish or fishing gear seized under s 268 or 269. Section 272 allows the owner of any property, or the owner or charterer of the vessel if the property was seized from there, seized under s 268 or 269 and being retained under s 271, to lodge a bond with the relevant authority in return for its release. By virtue of s 273, the relevant authority has the power to sell any fish it has retained under s 271. Where the relevant authority no longer wishes to retain fish or fishing gear seized under s 268 or 269, or where it is required to make such property available for collection under s 271, s 274 requires a notice of collection to be served on every person who appears to be the owner, or owners, of the property. Section 275 provides a power for certain fishing gear seized by an enforcement officer to be forfeited to the relevant authority for disposal. A forfeiture power in respect of fish that fail to meet size requirements which corresponds to the forfeiture power in respect of fishing gear in s 275, is provided by s 276. Section 277, Sch 18 make detailed provision in respect of the forfeiture under s 275 or 276 of gear or fish which fail to meet size requirements. Where, after a successful prosecution under fisheries legislation, the court orders the forfeiture of the fish or gear in respect of which the offence was committed, s 278 provides that the relevant authority will be ordered to take possession of the property and may dispose of it as it sees fit; the proceeds of any sale may be retained by the relevant authority and the court may order the defendant to pay the costs of the relevant authority in storing the property. By virtue of s 279, an enforcement officer may detain a vessel to ensure the attendance of the alleged offenders in court and the payment of any fine on conviction. Provision is made by s 280 for the release of a vessel which is being detained under s 279. Where a vessel has been detained under s 279, s 281 provides a power for the court to order the release of the vessel if it is satisfied that the continued detention of the vessel is no longer necessary. Section 282 gives the relevant authority power to enter into an agreement with the owner or charterer of the vessel, or any of the owners or charterers of the vessel, to release a vessel detained under s 279 when a monetary security has been paid. Where a bond has been paid pursuant to s 282, and the notice of detention withdrawn, the court may order repayment of the bond to the person who provided the security if it is satisfied that the continuation of the bond is not necessary to ensure the attendance in court of the master, owner or charterer, or that, had the bond not been given, the court would not have ordered the detention of the vessel: s 283. An enforcement officer may request anybody on board a fishing boat to produce any automatic recording or transmitting equipment: s 284. Section 285 specifies the means by which notices required to be served under Pt 8 Ch 4 must be served, and s 286 establishes a means of determining when proceedings have been concluded. Section 287 deals with interpretation.

Chapter 5 (ss 288-292) Common enforcement provisions

Section 288 defines enforcement officer as someone who has powers under Pt 8, save those who have powers by virtue of being an assistant to an officer, and s 289 obliges enforcement officers who are exercising the common enforcement powers to show evidence that they have the authority to carry out their enforcement functions, when asked to do so. In conjunction with s 289, enforcement officers are also obliged to state their name, the power they are intending to use and reason for its use whenever they are requested to do so, although the officer may defer complying with the request if the immediate situation requires it: s 290. Unless an enforcement officer acts in bad faith or if there were no reasonable grounds for the officer to act in such manner, s 291 provides that enforcement officers and their assistants will be protected from liability in any civil or criminal proceedings for anything done or not done as a result of carrying out their functions. Section 292 provides for a number of offences that may be committed in relation to enforcement officers or people assisting them.

Chapter 6 (ss 293-295) Miscellaneous and supplementary

Section 293 amends the Fisheries Act 1981 s 30 so that it applies both to enforceable Community restrictions and enforceable Community obligations. The 2009 Act s 293 introduces powers for the Secretary of State (in relation to England or vessels outside the Welsh zone) or the Welsh Ministers (in relation to Wales or vessels within the Welsh Zone) to apply Fixed Administrative Penalties to domestic fisheries offences, namely offences which do not originate in Community law. Section 295 deals with application to the Crown.

Part 9 (ss 296-310) Coastal access

Section 296 imposes a duty, described as the 'coastal access duty', on the Secretary of State and Natural England by reference to two objectives. The first objective is that there is a route around the whole of the English coast consisting of one or more long-distance routes and available to the public for recreational journeys on foot or by ferry. The second objective, is that there is a margin of land along the length of the coast which the public may enjoy. Section 297 sets out the requirements imposed on Natural England and the Secretary of State as regards considerations that they have to take into account in discharging the coastal access duty. Under ss 298, 299, Natural England must draw up a scheme setting out the approach it will take when discharging its coastal access duty, and must review the coastal access scheme from time to time. Section 300 defines the English coast for these purposes by reference to its adjacency to the sea. Where the coast is interrupted by a river, s 301 provides that Natural England may treat the relevant upstream waters of any river as if they were the sea. New provisions, which all refer to the coastal access duty and reports prepared pursuant to that duty, are added to the National Parks and Access to the Countryside Act 1949 by the 2009 Act s 302, Sch 19. Section 303 makes provision with regard to access to the coastal margin. Section 304, Sch 20 make further provision about the establishment and maintenance of the English coastal route. Section 305 makes clear that Natural England does not have unlimited responsibility for the safety of people who choose to use the route or associated access land. Provision is made by s 306 for the exclusion of occupiers' liability. Section 307 relates to the application of the Act to the Isles of Scilly, and s 309 deals with application to the Crown. Interpretation of Pt 9 is dealt with by s 309. Section 310 amends the Government of Wales Act 2006 to confer legislative competence on the National Assembly for Wales.

Part 10 (ss 311-315) Miscellaneous

Section 311 amends the Natural Environment and Rural Communities Act 2006 s 1 in order to clarify the area over which Natural England may exercise its functions. The Civil Contingencies Act 2004 is amended by the 2009 Act s 312 in order to remove Natural England from the lists of category 1 responders. Section 313 amends the Environmental Protection Act 1990 in order to clarify the area over which the Countryside Council for Wales may exercise its functions. The

2009 Act s 314 inserts a new navigational consenting regime into the Energy Act 2008 and provides a variety of powers for the enforcement of that regime. A number of miscellaneous amendments of the Harbours Act 1964 are set out in the 2009 Act s 315, Sch 21.

Part 11 (ss 316-325) Supplementary provisions

Section 316 contains general provisions for making regulations and orders, and s 317 contains details for making directions. Section 318 provides for individual liability in some cases where there is also corporate liability. By virtue of s 319, the Territorial Waters Jurisdiction Act 1878 s 3, which provides that a person who is not a British subject may not be prosecuted for an indictable offence committed in the territorial sea without the consent of the Secretary of State, is disapplied in relation to proceedings for offences committed under the 2009 Act. Section 320 allows the Secretary of State to make, by order, transitional provisions and savings. Section 321 gives effect to Sch 22, which makes various repeals. Section 322 deals with interpretation, s 323 deals with extent, and s 324 makes provision concerning commencement. Section 325 specifies the short title.

Amendments, repeals and revocations

Subscribers should note that the lists below mention repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. Please also note that these lists are not exhaustive.

The following Acts are repealed in full: White Herring Fisheries Act 1771; Seal Fishery Act 1875; North Sea Fisheries Act 1893; Behring Sea Award Act 1894; Seal Fisheries (North Pacific) Act 1895; Seal Fisheries (North Pacific) Act 1912; Sea Fisheries Regulation Act 1966.

Specific provisions of a number of Acts are repealed. These include: Fisheries Act 1891 s 13; Sea Fish (Conservation) Act 1967 ss 13, 17; Port of London Act 1968 ss 86, 87, 163; Salmon and Freshwater Fisheries Act 1975 ss 3, 6-8, 16, 17, 19-24, Sch 1; Fisheries Act 1981 s 28; Wildlife and Countryside Act 1981 ss 36, 37; Salmon Act 1986 s 37; Merchant Shipping Act 1988 s 36; Environment Act 1995 s 102; Planning Act 2008 ss 148, 149.

Halsbury's Laws of England/STOP PRESS/MENTAL HEALTH ACT 2007

MENTAL HEALTH ACT 2007

The Mental Health Act 2007 makes provision about mentally disordered persons. The Act received the royal assent on 19 July 2007 and the following provisions came into force on that date: ss 52, 53, 56-59, Sch 10. Section 45 came into force on 24 July 2007: SI 2007/2156. The following provisions came into force on 1 October 2007: ss 19, 20, 39 (in part), 51, Sch 5 (in part) (SI 2007/2635, SI 2007/2798). Section 26 came into force on 1 December 2007 and s 43 came into force on 1 January 2008: SI 2007/2798. The remaining provisions come into force on a day or days to be appointed.

Part 1 (ss 1-47) Amendments to Mental Health Act 1983

Section 1, Sch 1 make provision for the removal of certain categories of mental disorder. Section 2 provides that a person with learning disability is not to be considered by reason of

that disability to be suffering from mental disorder unless the disability is associated with abnormally aggressive or seriously irresponsible conduct on his part. Nor is dependence on alcohol or drugs to be considered a disorder or disability of the mind: s 3. Section 4 replaces the 'treatability' and 'care' tests with the appropriate treatment test. Section 5 specifies further cases in which the appropriate treatment test is to apply. Section 6 deals with the appropriate treatment test in relation to certification of a second opinion where treatment requires consent or a second opinion. A change in the definition of 'medical treatment' is provided by s 7. Under s 8, the Secretary of State is required to include in the Mental Health Act Code of Practice a statement of principles that he or she thinks should inform decisions made under the Mental Health Act 1983. The 2007 Act s 10 substitutes references to 'responsible clinician' for references to 'responsible medical officer'. Similar amendments are made, with regard to patients concerned in criminal proceedings, by s 11. Similar amendments are made to provisions regarding consent to treatment by s 12. Section 13 provides a power for an approved clinician to visit and examine a patient for the purposes of a tribunal reference or a tribunal application. A definition of 'approved clinician' is provided by s 14. Section 15 makes consequential amendments to various Acts in order to replace the term 'responsible medical officer' with that of 'responsible clinician'. Section 16 operates so that a registered medical practitioner who is an approved clinician is to be treated as approved for certain purposes. The Secretary of State and the Welsh Ministers are given the power to set out in regulations the circumstances in which approval in England as an approved clinician should be considered to mean approval in Wales as well, and vice versa: s 17. Section 18 makes provision as to the role of approved mental health professionals. Provision is made as to the approval of courses for approved mental health professionals: s 19. Certain codes of practice will continue to apply to social workers when carrying out the functions of an approved mental health professional: s 20. Section 21, Sch 2 bring into effect further amendments in relation to approved mental health professionals. Section 22 deals with conflicts of interest in professional roles.

Section 23 provides an extension of the power to appoint an acting nearest relative. Under s 24, a right to discharge and vary orders appointing a nearest relative is given. A relative's right to apply to a tribunal is restricted by s 25. Section 26 gives a civil partner equal status to a husband or wife for the purpose of acting as nearest relative. Section 27 concerns the giving of consent by the patient as to whether electro-convulsive therapy is administered. Section 28 makes provision in relation to electro-convulsive therapy where it is required as urgent treatment. Section 29 deals with withdrawal of consent. Under s 30, the appropriate national authority must make such arrangements as it considers reasonable to enable independent mental health advocates to be available to help qualifying patients. With regard to children, hospital managers must ensure that the patient's environment in the hospital is suitable having regard to his age: s 31.

The responsible clinician may by order in writing discharge a detained patient from hospital subject to his being liable to recall: s 32, Schs 3, 4. Section 33 makes provision with regard to the relationship between supervised community treatment and leave of absence. Section 34 makes further provision with regard to consent to treatment in the context of treatment on recall of a community patient or revocation of order. Section 35 regulates the treatment of community patients while in the community. Provisions regarding after-care under supervision are repealed: s 36. Where a patient is absent without leave on the day on which the managers would be required to refer the patient's case to a Mental Health Review Tribunal, that requirement does not apply unless the patient is taken into custody and returns to the hospital where he ought to be or the patient returns himself to the hospital where he ought to be: s 37. Section 38 provides for a Mental Health Review Tribunal for England and for Wales whose purpose is to deal with applications and references by and in respect of patients.

Section 39, Sch 5 deal with cross-border arrangements. The power of the Crown Court to make restriction orders for a limited period is removed: s 40. Section 41 deals with conditionally discharged patients subject to limitation directions.

With regard to the offence of ill-treatment, the maximum penalty on conviction on indictment is increased: s 42. If a patient aged 16 or 17 years who has capacity to consent to the making of arrangements for his admittance to hospital, consents to such arrangements, they may be made, carried out and determined on the basis of that consent even though there are persons who have parental responsibility for him: s 43. Section 44 provides for the transfer of a person detained in a place of safety to another place of safety. Section 45 provides for the delegation of powers of managers of NHS foundation trusts. Section 46 adds a reference to Local Health Boards to the definition of 'the managers' of hospitals. The procedure to be applied when rule-making powers are exercised by the Welsh Ministers is specified by s 47.

Part 2 (ss 48-51) Amendments to other Acts

Section 48, Sch 6 extend the rights of victims under the Domestic Violence, Crime and Victims Act 2004. The 2007 Act s 49 provides exceptions to the requirement in the Mental Capacity Act 2005 to appoint an independent mental capacity advocate. The 2007 Act s 50, Schs 7-9 make it lawful to deprive a person of their liberty in a hospital or care home only if a standard or urgent authorisation is in force or if it is a consequence of giving effect to an order of the Court of Protection on a personal welfare matter. Section 51 makes a minor amendment to the 2005 Act s 20 regarding restrictions on deputies.

Part 3 (ss 52-59) General

Section 53, Sch 10 deal with transitional provision and savings, s 54 makes consequential provisions and s 55, Sch 11 contain repeals and revocations. Sections 56, 57 deal with commencement, s 58 with extent and s 59 with short title.

Amendments, repeals and revocations

Subscribers should note that the list below mentions repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. This information may also be found in the COMMENCEMENT OF STATUTES table in the *Current Service* Noter-up booklet. Please also note that this list is not exhaustive.

Specific provisions of a number of Acts are amended, added or repealed. These include: Mental Health Act 1983 ss 1, 3, 5, 11-12A, 17-17G, 19-21B, 23-26, 29, 30, 32, 34-38, 41, 42, 44, 45A, 45B, 47-58A, 60-68, 72, 73, 75, 76, 78, 79, 114, 114A, 118, 120, 121, 127, 130A-131A, 135, 136, 140, 142A, 142B, 145; Army Act 1955 s 116B; Air Force Act 1955 s 116B; Naval Discipline Act 1957 s 63B; Criminal Procedure (Insanity) Act 1964 s 5A; Armed Forces Act 2006 s 171; Care Standards Act 2000 s 62; Domestic Violence, Crime and Victims Act 2004 ss 36-39, 41A-44B; Mental Capacity Act 2005 ss 4A, 4B, 16A, 20, 40.

Halsbury's Laws of England/STOP PRESS/MORTGAGE REPOSSESSIONS (PROTECTION OF TENANTS ETC) ACT 2010

MORTGAGE REPOSSESSIONS (PROTECTION OF TENANTS ETC) ACT 2010

The Mortgage Repossessions (Protection of Tenants etc) Act 2010 makes provision so as to protect persons whose tenancies are not binding on mortgagees and to require mortgagees to give notice of the proposed execution of possession orders. The Act received the royal assent

on 8 April 2010 and comes into force on a day or days to be appointed. For details of commencement, see the COMMENCEMENT OF STATUTES table in the *Current Service* Noter-up booklet.

Section 1 makes provision in respect of the power of the court to postpone the date for delivery of possession of a property where a mortgagee under a mortgage of land, which consists of or includes a dwelling-house, brings an action in which the mortgagee claims possession of the mortgaged property and there is an unauthorised tenancy of all or part of the property. By virtue of s 2, where a mortgagee under a mortgage of land, which consists of or includes a dwelling-house, obtains an order for possession of the mortgaged property, the order may be executed only if the mortgagee gives notice at the property of any prescribed step taken for the purpose of executing the order, and only after the end of a prescribed period beginning with the day on which such notice is given. Section 3 deals with interpretation. Section 4 deals with commencement, extent and the short title.

Halsbury's Laws of England/STOP PRESS/PENSIONS ACT 2008

PENSIONS ACT 2008

The Pensions Act 2008 makes provision relating to pensions. The Act received the royal assent on 26 November 2008 and the following provisions came into force on that day: ss 67-73, 78-86, 124 (in part), 125, 131, 133, 134, 140-147, 148 (in part), 149-151, Schs 9 (in part), 11 (in part). Section 124 (in part) came into force on 19 December 2008: SI 2008/3241. The 2008 Act ss 62-64, 132, 138 came into force on 26 January 2009: SI 2009/82. The 2008 Act ss 100, 101 (in part), 105, 130, 135, 136, 139, 148 (in part), Schs 2 (in part), 11 (in part) came into force on 6 April 2009: SI 2009/82. The 2008 Act s 122 (in part), Schs 8 (in part) and 14 (in part) came into force on 1 April 2009: SI 2009/809. The 2008 Act s 101 (in part) and Sch 2 (in part) came into force on 6 April 2009: SI 2009/809. The 2008 Act s 126 (in part), Sch 9 (in part) came into force on 29 June 2009: SI 2009/1566. The 2008 Act s 74 came into force on 1 July 2009: SI 2009/1566. The 2008 Act Sch 10 (in part) came into force on 26 February 2010: SI 2010/467. The 2008 Act s 103 (in part) came into force on 8 April 2010: SI 2010/1221. The 2008 Act Sch 10 (in part) came into force on 26 February 2010: SI 2010/467. The 2008 Act s 124 (in part, so far as not already in force) came into force on 31 March 2010: SI 2010/1145. The 2008 Act s 103 (in part) came into force on 8 April 2010: SI 2010/1221. The 2008 Act ss 75 (so far as not already in force), 76, 99, Sch 1 (so far as not already in force) comes into force on 5 July 2010: SI 2010/10. For details of commencement, see the COMMENCEMENT OF STATUTES table in the *Current Service* Noter-up booklet.

Part 1 (ss 1-99) Pension scheme membership for jobholders

Chapter 1 (ss 1-33) Employers' duties

Section 1 defines 'jobholder'. If a jobholder is an active member of a qualifying scheme, the employer must not take any action, or make any omission, by which the jobholder ceases to be an active member of the scheme, or the scheme ceases to be a qualifying scheme: s 2. Under s 3, the employer must make prescribed arrangements by which the jobholder becomes an active member of an automatic enrolment scheme with effect from the automatic enrolment date, which is the first day on which s 3 applies to any person as a jobholder of the employer. Section 4 provides that the Secretary of State may by regulations provide that in prescribed cases the automatic enrolment date is a later date. The employer must make prescribed arrangements by which the jobholder becomes an active member of an automatic enrolment

scheme with effect from the automatic re-enrolment date: s 5. Section 6 deals with the timing of automatic re-enrolment. A jobholder who is not an active member of a qualifying scheme, may by notice require the employer to arrange for the jobholder to become an active member of an automatic enrolment scheme: s 7. If the jobholder gives notice under s 8, the jobholder is to be treated for all purposes as not having become an active member of the scheme on that occasion and any contributions paid by the jobholder, or by the employer on behalf or in respect of the jobholder, on the basis that the jobholder has become an active member of the scheme on that occasion must be refunded in accordance with prescribed requirements: s 8. Section 9 provides that a worker without qualifying earnings may by notice require the employer to arrange for the worker to become an active member of a pension scheme that satisfies the requirements of s 9. Under s 10, the Secretary of State must make provision by regulations for all jobholders to be given information about the effect of these provisions. Section 11 specifies the information to be given to the Pensions Regulator. The Secretary of State may by regulations provide that ss 2-9 do not apply in the case of an employer of any description until such date after the commencement of ss 2-9 as is prescribed in relation to employers of that description: s 12. A person's qualifying earnings in a pay reference period of 12 months are the part of the gross earnings payable to that person in that period that is more than £5,035 and not more than £33,540: s 13. Section 14 provides that the Secretary of state must in each tax year undertake a review of the qualifying earnings band. The Secretary of State may by regulations make provision for determining a person's earnings in any pay reference period and make provision for determining the first date of each pay reference period in relation to a person: s 15. Section 16 defines what a qualifying scheme is in relation to a jobholder. Section 17 specifies what an automatic enrolment scheme is in relation to a jobholder. An occupational pension scheme is defined, for the purposes of Pt 1, by s 18. For the purposes of Pt 1, a personal pension scheme is a pension scheme that is not an occupational pension scheme: s 19. A money purchase scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if under the scheme certain conditions are met: see s 20. Subject to specified conditions, a defined benefits scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if the jobholder is in contracted-out employment: s 21. A scheme satisfies the test scheme standard in relation to a jobholder if the pensions to be provided for the relevant members of the scheme are broadly equivalent to or better than the pensions which would be provided for them under a test scheme: s 22. Section 23 provides that a test scheme is an occupational pension scheme which satisfies certain requirements. A hybrid scheme that has its main administration in the United Kingdom satisfies the quality requirement in relation to a jobholder if it satisfies either the requirements for a money purchase scheme under s 20, subject to any prescribed modifications or the requirements for a defined benefits scheme under ss 21-23, subject to any prescribed modifications: s 24. The Secretary of State may by regulations make provision as to the quality requirement to be satisfied in the case of certain occupational pension schemes: s 25. Section 26 provides the conditions which are to be met for the scheme to satisfy the quality requirement in relation to a jobholder. The Secretary of State may by regulations make provision as to the quality requirement to be satisfied in the case of a personal pension scheme to which s 26 does not apply: s 27. Section 28 provides for certification that the quality requirement is satisfied. Section 29 provides for transitional periods for money purchase and personal pension schemes. A transitional period for defined benefits and hybrid schemes is prescribed by s 30. Where a jobholder is an active member of a qualifying scheme and a freezing event occurs in relation to the scheme, the jobholder does not, for the purposes of ss 1-33, cease to be an active member of the scheme, and the scheme does not, for those purposes, cease to be a qualifying scheme, by virtue of any relevant provision: s 31. The trustees of an occupational pension scheme may by resolution modify the scheme: s 32. Section 33 deals with the deduction of contributions to a scheme from a person's remuneration.

Chapter 2 (ss 34-49) Compliance

Contravention of any of the employer duty provisions does not give rise to a right of action for breach of statutory duty: s 34. Under s 35, the Regulator may issue a compliance notice to a person if the Regulator is of the opinion that the person has contravened one or more of the employer duty provisions. The Regulator may issue a third party compliance notice if it is of the opinion that a person has contravened one or more of the employer duty provisions, the contravention is or was, wholly or partly, a result of a failure of another person to do any thing, and that failure is not itself a contravention of any of the employer duty provisions: s 36. The Regulator may issue an unpaid contributions notice to an employer if it is of the opinion that relevant contributions have not been paid on or before the due date: s 37. Section 38 makes provision as to the calculation and payment of contributions in relation to a compliance notice issued to an employer in respect of a contravention with regard to continuity of scheme membership, a failure to comply with an enrolment duty or an unpaid contributions notice. Section 39 defines 'relevant contributions'. Section 40 specifies the circumstances under which the Regulator may issue a fixed penalty notice to a person. Further, in specified circumstances, the Regulator may issue an escalating penalty notice to a person: s 41. Any penalty payable under s 40 or s 41 is recoverable by the Regulator: s 42. Under s 43, the Regulator may review a notice to which s 43 applies on the written application of the person to whom the notice was issued or if the Regulator otherwise considers it appropriate. A person to whom a notice is issued under s 40 or s 41 may, if certain conditions are satisfied, make a reference to the Pensions Regulator Tribunal in respect of the issue of the notice or the amount of the penalty payable under the notice: s 44. Section 45 provides for offences of failing to comply. Section 46 deals with offences by bodies corporate. Proceedings for an offence under s 45 alleged to have been committed by a partnership or an unincorporated association may be brought in the name of the partnership or association: s 47. Section 48 provides for offences of providing false or misleading information. In relation to the monitoring of employers' payments to personal pension schemes, see s 49.

Chapter 3 (ss 50-59) Safeguards: employment and pre-employment

An employer contravenes s 50 if any statement made or question asked by or on behalf of the employer for the purposes of recruitment indicates that an application for employment with the employer may be determined by reference to whether an applicant might opt out of automatic enrolment: s 50. The Regulator may issue a compliance notice to an employer if the Regulator is of the opinion that the employer has contravened s 50: s 51. Under s 52, the Regulator may issue a penalty notice to an employer if the Regulator is of the opinion that the employer has contravened s 50, or has failed to comply with a compliance notice under s 51. As to the review of notices and references to the Pensions Regulator Tribunal see s 53. An employer contravenes s 54 if the employer takes any action for the sole or main purpose of inducing a worker to give up membership of a relevant scheme without becoming an active member of another relevant scheme within the prescribed period or inducing a jobholder to give a notice under s 8 without becoming an active member of a qualifying scheme within the prescribed period: s 54. Section 55 provides for the right not to suffer detriment. A worker may present a complaint to an employment tribunal that the worker has been subjected to a detriment in contravention of s 55: s 56. The right of an employee not to be unfairly dismissed is provided: s 57. Under s 58, any provision in any agreement is void in so far as it purports to exclude or limit the operation of any provision of Pt 1, or to preclude a person from bringing proceedings under s 56 before an employment tribunal. Section 59 makes provision as to the jurisdiction of the Employment Appeal Tribunal.

Chapter 4 (ss 60-66) Supplementary provision about compliance and information-sharing

Section 60 provides the requirement to keep records. Under s 61, the Regulator has powers to require information and to enter premises. Section 62 substitutes the Pensions Act 2004 s 88 so as to provide for the disclosure of tax information. As to information for private pensions policy and retirement planning, see the 2008 Act s 63. Section 64 provides a penalty for disclosure.

Section 65 makes provision in relation to the Regulator's objectives to maximise compliance with duties, and s 66 deals with the functions of the Pensions Ombudsman.

Chapter 5 (ss 67-78) Duty to establish a pension scheme

The Secretary of State is required by s 67 to establish a pension scheme and to make provision for its administration and management. An order under s 67 establishing a scheme must provide for the trustee corporation to be a trustee on the coming into force of the scheme: s 68. Section 69 provides that if an order under s 67 establishes a scheme, the Secretary of State must by order under s 67 require the trustees to make and maintain arrangements for consulting the members of the scheme and participating employers about the operation, development and amendment of the scheme. An order under s 67 must prescribe the maximum amount of contributions that may be made by or in respect of a member in any tax year: s 70. The Secretary of State may not make any order under s 67 relating to a scheme, except the order establishing the scheme and an order taking effect at the same time as that order, without the consent of the trustees: s 71. Under s 72, a person who proposes to make rules under s 67 must publish a draft of the rules and invite comments. The Interpretation Act 1978 applies in relation to rules under the 2008 Act s 67 as if they were contained in a deed not made under an enactment: s 73. Section 74 provides that the Secretary of State must appoint a person to review, in relation to a scheme established under s 67, the effect of provision made under s 70, the effect of any restrictions on rights to transfer into the scheme or transfer out to another pension scheme and such other matters as the Secretary of State may direct. Section 75, Sch 1 establish the body corporate known as the trustee corporation. The functions of the trustee corporation are to act as a trustee of any scheme established under s 67 and any other functions it is given by or under an enactment in connection with the scheme: s 76. The Secretary of State may by regulations provide that legislation applying in relation to a person as trustee of a pension scheme, or as director of a company which is a trustee of a pension scheme, applies in relation to the trustee corporation, or its members, with any modifications prescribed in the regulations: s 77. Section 78 provides interpretation for ss 67-78.

Chapter 6 (ss 79-86) Personal Accounts Delivery Authority

Section 79 specifies the functions of the Personal Accounts Delivery Authority. The Authority must have regard to certain principles including that participation in qualifying schemes should be encouraged and facilitated, the burdens imposed on employers as a result of Pt 1 should be minimised and the cost of membership of a scheme established under s 67 should be minimised: s 80. The Secretary of State may give the Authority guidance or directions about the discharge of its functions: s 81. Section 82 amends the Pensions Act 2007 Sch 6 in order to provide that the Secretary of State may, with the consent of the Treasury, give financial assistance to the Authority. The 2008 Act s 83 makes provision as to the disclosure of information by the Regulator. Section 84 makes provision in relation to the non-executive committee of the Authority. The 2007 Act Sch 6 is amended in relation to executive members: 2008 Act s 85. Section 86 provides that the Secretary of State may by order provide for the winding up and dissolution of the Authority.

Chapter 7 (s 87) Stakeholder pension schemes

Section 87 makes provision in relation to stakeholder pension schemes.

Chapter 8 (ss 88-99) Application and interpretation

Section 88 interprets 'employer', 'worker' and related expressions for the purposes of Pt 1. Section 89 makes provision as to agency workers. A person who holds office as a director of a company is not, by virtue of that office or of any employment by the company, a worker for the purposes of Pt 1, unless the person is employed by the company under a contract of employment and there is at least one other person who is employed by the company under a contract of employment: s 90. Section 91 makes provision with regard to crown employment. A person serving as a member of the naval, military or air forces of the Crown is not, by virtue of

anything done in assisting those activities, a worker for the purposes of Pt 1: s 92. Section 93 provides that Pt 1 has effect in relation to employment as a relevant member of the House of Lords staff as it has effect in relation to other employment. Part 1 has effect in relation to employment as a relevant member of the House of Commons staff as it has effect in relation to other employment (s 94) and in relation to a person who holds the office of constable or an appointment as a police cadet, and does not hold that office or appointment under a contract of employment, as if the person were employed by the relevant police authority under a worker's contract (s 95). Subject to regulations under s 96, a person employed or engaged in any capacity on board a ship is not, by virtue of that employment or engagement, a worker for the purposes of Pt 1: s 96. Her Majesty may by Order in Council provide that, to the extent and for the specified purposes, the relevant provisions apply, with or without modification, in relation to a person in offshore employment: s 97. Section 98 provides for the extension of the definition of worker, and s 99 provides for the interpretation of Pt 1.

Part 2 (ss 100-106) Simplification etc

Safeguarded rights are abolished: s 100. Section 101, Sch 2 make provision as to the revaluation of accrued benefits. Section 102, Sch 3 make provision as to the consolidation of additional pension. Section 103 deals with the effect of entitlement to guaranteed minimum pensions. Section 104, Sch 4 make minor and consequential amendments in relation to additional pension. Section 105 provides for the extension of the assessed income period for those aged 75 or over in relation to state pension credit. As from the contracting-out abolition date, pension schemes are not required to make special provision in relation to the protected rights of members: s 106.

Part 3 (ss 107-123) Pension compensation

Chapter 1 (ss 107-120) Pension compensation on divorce etc

Pension compensation sharing is available under ss 107-120 in relation to a person's shareable rights to PPF compensation: s 107. Section 108 provides the interpretation for ss 107-120; in particular, 'PPF compensation' means compensation payable under the pension compensation provisions. Section 109 deals with the activation of pension compensation sharing. For the purposes of ss 107-120, a qualifying agreement is an agreement which has been entered into in such circumstances as the Secretary of State may prescribe by regulations, and is registered in the Books of Council and Session: s 110. Section 111 provides for the creation of pension compensation debits and credits. The Secretary of State may by regulations make provision about the calculation and verification of cash equivalents for the purposes of s 111: s 112. Where any of a person's shareable rights to PPF compensation are subject to a pension compensation debit, each payment or future payment to which the person is entitled under the pension compensation provisions by virtue of those rights and which is a qualifying payment is reduced by the appropriate percentage: s 113. Under s 114, where the Board is subject to a liability in respect of a pension compensation credit, it must discharge the liability before the end of the implementation period for the credit. Section 115 defines 'implementation period'. Where the Board is subject to a liability in respect of a pension compensation credit, it must discharge the liability by sending a notice to the transferee: s 116, Sch 5. The Secretary of State may by regulations make provision for the purpose of enabling the Board to recover from the parties to pension compensation sharing prescribed charges in respect of prescribed descriptions of pension compensation sharing activity: s 117. Section 118 concerns the supply of information about pension compensation in relation to divorce. The Secretary of State may by regulations require the Board to supply, to such persons as the Secretary of State may specify in the regulations, such information relating to anything which follows from the application of s 111 as the Secretary of State may so specify: s 119. Section 120, Schs 6, 7 make provision as to pension compensation sharing and attachment on divorce.

Chapter 2 (ss 121-123) Other provision about pension compensation

Section 121 makes provision with regard to charges in respect of pension sharing. Section 122, Sch 8 amend the 2004 Act Sch 7, and the 2008 Act s 123 makes consequential amendments.

Part 4 (ss 124, 125) Financial assistance scheme

Section 124 amends the financial assistance scheme for members of certain pension schemes, and s 125 places a restriction on the purchase of annuities.

Part 5 (ss 126-142) Miscellaneous

Section 126, Sch 9 make amendments to provisions relating to contribution notices or financial support directions. Section 127 provides for the review of the initial operation of the 2004 Act ss 38A, 38B. The 2008 Act s 128 applies to Scotland. Section 129, Sch 10 make provision about the payment of interest on the late payment of levies. Section 130 concerns payments to employers. Section 131 makes provision as to the appointment of trustees. Under s 132, there may be intervention by the Regulator where a scheme's technical provisions are improperly determined. Section 133 makes provision as to the delegation of powers by the Regulator. Section 134 provides for the exclusion of transfers out in certain cases. Provision is made by s 135 for the right to pay additional Class 3 contributions in certain cases. Section 136 applies to Northern Ireland. Section 137 provides for the adjustment of increases in survivors' pension in relation to official pensions. Section 138 makes provision as to the effect of later marriage or civil partnership in relation to war pensions. With regard to the Polish Resettlement Act 1947, the 2008 Act s 139 makes provision as to the effect of residence in Poland. Sections 140, 141 deal with pre-1948 insurance affecting German pension entitlement. The Secretary of State may by regulations make provision authorising the Secretary of State, or a person providing services to the Secretary of State, to supply relevant persons with social security information about persons in receipt of state pension credit: s 142.

Part 6 (ss 143-151) General

Any power conferred on the Secretary of State to make an order or regulations under the 2008 Act is exercisable by statutory instrument: s 143. An order or regulations may include any such incidental, supplemental, consequential or transitional provision as appears to the Secretary of State to be expedient, or provision conferring a discretion on any person: s 144. Section 145 provides the power to make further provision. Under s 146, the Secretary of State may by order make pre-consolidation amendments of certain enactments. Section 147 deals with general financial provisions. Section 148, Sch 11 provide for repeals. Section 149 deals with commencement, s 150 with extent and s 151 with short title.

Amendments, repeals and revocations

Subscribers should note that the list below mentions repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. Please also note that the list is not exhaustive.

Specific provisions of a number of Acts are added, amended or repealed. These include: Polish Resettlement Act 1947 s 1; Matrimonial Causes Act 1973 ss 21B, 21C, 24E-25A, 25E-25G, 31, 40B; Matrimonial and Family Proceedings Act 1984 ss 17, 18, 21; Social Security Contributions and Benefits Act 1992 ss 13A, 21, 39, 39C, 45, 47; Trade Union and Labour Relations (Consolidation) Act 1992 ss 237, 238; Social Security Administration Act 1992 s 148AB. Pension Schemes Act 1993 ss 46-48, 93, 146, 164, 165, 167, 175A, Sch 3; Pensions Act 1995 ss 7, 168;

Employment Rights Act 1996 ss 104D, 105, 108; Employment Tribunals Act 1996 s 21; Social Security Act 1998 s 3; State Pension Credit Act 2002 s 9; Pensions Act 2004 ss 5, 38, 39A, 43A, 72, 74-76, 82, 88, 168A, 173, 286, 286A, 316, 323, Schs 1, 2, 7, 10; Civil Partnership Act 2004 Sch 5; Pensions Act 2007 s 23.

Halsbury's Laws of England/STOP PRESS/PERPETUITIES AND ACCUMULATIONS ACT 2009

PERPETUITIES AND ACCUMULATIONS ACT 2009

The Perpetuities and Accumulations Act 2009 amends the law relating to the avoidance of future interests on grounds of remoteness and the law relating to accumulations of income. The Act received royal assent on 12 November 2009 and ss 23 and 24 came into force on that day. The remaining provisions come into force on 6 April 2010: SI 2010/37.

The rule against perpetuities applies (and applies only) as provided by s 1 unless an exception to the rule applies by virtue of s 2. Power is conferred on the Lord Chancellor by s 3 to specify exceptions to the rule. Section 4 abolishes existing exceptions to the rule. Under s 5, the perpetuity period is 125 years (and no other period). Such period starts in accordance with the provision made by s 6. A wait and see rule, set out in s 7, provides for an estate or interest to be treated as if it were not subject to the rule against perpetuities until such time (if any) as it becomes established that the vesting must occur (if at all) after the end of the perpetuity period, and that, if it becomes so established, the validity of anything previously done in relation to the interest is not affected. By virtue of s 8, if it becomes apparent that an estate or interest would be void for perpetuity if the inclusion of certain persons as members of a class would cause the estate or interest to be treated as void for remoteness, those persons must be treated as excluded from the class from the time it is or becomes apparent, unless their exclusion would exhaust the class. An estate or interest is not void for remoteness by reason only that it is ulterior to and dependent on an estate or interest which is so void: s 9. If an estate arising under a right of reverter on the determination of a determinable fee simple is void for remoteness, the determinable interest becomes absolute under s 10. Section 11 defines when a power of appointment is a 'special power of appointment' for the purposes of the Act. Provision is made by s 12 for pre-commencement instruments where the perpetuity period is difficult to ascertain. Restrictions on excessive accumulations are abolished by s 13. Section 14 imposes restrictions on accumulations for charitable purposes; and s 15 prescribes the instruments to which the Act applies. The application of specified provisions of the Perpetuities and Accumulations Act 1964 are excluded in relation to instruments to which the 2009 Act applies: s 16. By virtue of s 17, the Act binds the Crown but does not extend the rule against perpetuities in relation to the Crown. The rule of law limiting the duration of non-charitable purpose trusts is not affected by the Act: s 18. By virtue of s 19, if provision is made otherwise than by an instrument, the Act applies as if the provision were contained in an instrument taking effect on the making of the provision. Section 20 provides for interpretation, and s 21 and the Schedule provide for repeals. Section 22 deals with commencement, s 23 with extent and s 24 with short title.

Amendments, repeals and revocations

Subscribers should note that the list below mentions repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. Please also note that the list is not exhaustive.

Specific provisions of a number of Acts are added, amended or repealed. These include: Law of Property Act 1925 ss 162, 164-166; Perpetuities and Accumulations Act 1964 ss 13, 15(5A), (5B); Pension Schemes Act 1993 s 163.

Halsbury's Laws of England/STOP PRESS/PLANNING ACT 2008

PLANNING ACT 2008

The Planning Act 2008 establishes the Infrastructure Planning Commission and makes provision about its functions, makes provision about the authorisation of projects for the development of nationally significant infrastructure, and makes provision about town and country planning and the imposition of a community infrastructure levy. The Act received the royal assent on 26 November 2008 and the following provisions came into force on that date: ss 205, 207-210, 211 (in part), 212-223, 226-237, 239-242. Sections 194 (in part), 201-203, 225, Schs 7 (in part), 13 (in part) came into force on 26 January 2009. Sections 5-13, 175 (in part), 177, 179-182, 184, 191 (in part), 194 (in part), 195, 196, 206 (for certain purposes), 211 (in part), 224 (in part), 238 (for certain purposes), Schs 7 (in part), 9 (in part), 10 (in part), 13 (for certain purposes) come into force in relation to England and Wales on 6 April 2009: SI 2009/400. Sections 183, 185, 187, 191 (in part), 197-199, 238, Schs 7 (in part), 11, 13 (for certain purposes), come into force in relation to England on 6 April 2009: SI 2009/400. So far as not already in force, ss 14(1)(a)-(l), (2)-(7), 15-26, 31-36, 55, 60-133, 135-152, 154-175, and Schs 2-5 came into force on 1 March 2010: SI 2010/101. The remaining provisions come into force on a day or days to be appointed. For details of commencement, see the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet.

Part 1 (ss 1-4) The Infrastructure Planning Commission

Section 1 creates the Infrastructure Planning Commission ('the Commission'), and gives effect to Sch 1, which describes the structure of the Commission, the process by which Commissioners are appointed, and their terms and conditions of employment. By virtue of s 2, the Commission must issue a code of conduct for its Commissioners, which should include a requirement for Commissioners to disclose all relevant interests, including financial information. The Commission is required under s 3 to establish a procedure for the disclosure and registration of financial and other interests of the Commissioners and arrange for a register of entries to be published. The Secretary of State may make regulations to allow the Commission to charge fees for the performance of any of its functions: s 4.

Part 2 (ss 5-13) National policy statements

Section 5 enables the Secretary of State to designate a national policy statement dealing with matters such as the criteria to be applied in deciding whether a location is suitable for a particular description of development. The Secretary of State may review all or part of a national policy statement when he considers it appropriate: s 6. Consultation and publicity requirements in relation to national policy statements are prescribed by ss 7-9. Where the Secretary of State is either designating or reviewing a national policy statement, by virtue of s 10 he must do so with the objective of contributing to sustainable development, which includes a duty to have regard to the desirability of mitigating, and adapting to, climate change, and achieving good design. Section 11 empowers the Secretary of State to suspend the operation of part or all of a national policy statement if he decides that, since the relevant part of the statement was issued or reviewed, there has been a significant and unanticipated change in

circumstances. The Secretary of State is entitled to designate a statement as a national policy statement even if the statement was issued by the Secretary of State before the commencement of s 5: s 12. Under s 13, legal challenges in connection with national policy statements can be brought only by judicial review and only during specified six-week periods.

Part 3 (ss 14-30) Nationally significant infrastructure projects

Section 14 lists at the general level the categories of project that are nationally significant infrastructure projects for the purposes of the 2008 Act. The situations in which the following specific types of project constitute nationally significant infrastructure projects are also prescribed: (1) the construction or extension of a generating station (s 15); (2) the installation of an electric line above ground (s 16); (3) development relating to the underground storage of gas (s 17); (4) the construction or alteration of a facility for the import of liquid natural gas or other natural gas (ss 18, 19); (5) the construction of a pipe-line by a gas transporter licensed under the Gas Act 1986 (2008 Act s 20); (6) the construction of a pipe-line other than by a gas transporter (s 21); (7) highway-related development (s 22); (8) airport-related development (s 23); (9) the construction or alteration of harbour facilities (s 24); (10) the construction or alteration of a railway or a rail freight interchange (ss 25, 26); (11) the construction or alteration of a dam or reservoir or development relating to the transfer of water resources (ss 27, 28); (12) the construction or alteration of a waste water treatment plant (s 29); and (13) the construction or alteration of a hazardous waste facility (s 30).

Part 4 (ss 31-36) Requirement for development consent

Under s 31, development consent must be given for development which is, or forms part of, a nationally significant infrastructure project, and s 32 defines 'development' for this purpose. Where a project requires development consent, by virtue of s 33 it no longer requires certain other consents under existing consent regimes. Section 34 preserves the powers of Welsh Ministers to make orders under the Transport and Works Act 1992 s 3 in relation to the construction or extension of Welsh offshore generating stations. Under the 2008 Act s 35, the Secretary of State may direct that an application made to the relevant authority for a consent or authorisation under s 33 should be referred to the Commission, which must then treat it as an application for development consent. Section 36 gives effect to Sch 2, which makes amendments consequential on the development consent regime.

Part 5 (ss 37-54) Applications for orders granting development consent

Chapter 1 (ss 37-40) Applications

Where development consent is required under the new single consent regime, promoters of nationally significant infrastructure projects must submit an application to the Commission in the prescribed form: s 37. Section 38 allows the Secretary of State to prescribe model provisions that developers may use if required to prepare a draft order to accompany an application for an order granting development consent. Under s 39, the Commission has a duty to maintain a register of applications for orders granting development consent and to publish this register or make arrangements for its inspection by the public. The Secretary of State is authorised by s 40 to make regulations modifying or excluding certain statutory provisions in relation to applications made by the Crown for an order granting development consent.

Chapter 2 (ss 41-50) Pre-application procedure

Where a person proposes to make an application for an order granting development consent, he is required to consult certain local authorities, persons with rights over the land and other prescribed persons: ss 41-44. Under s 45, the applicant must give each consultee a deadline for

responding to the consultation. Section 46 requires the applicant to give the Commission a copy of the consultation documents on or before commencing consultation. The applicant must also, by virtue of s 47, prepare and publish a statement setting out how he proposes to consult local people about the proposed application, and, by virtue of s 48, publicise the proposed application in the prescribed manner. Section 49 provides that the applicant must consider any relevant responses he has received to the consultation and publicity, and take these into account before submitting an actual application to the Commission. A power is given to the Commission and the Secretary of State by s 50 to give guidance on how to comply with the requirements of the pre-application procedures.

Chapter 3 (ss 51-54) Assistance for applicants and others

Under s 51, the Commission may give advice to an applicant, a potential applicant or others about applying for an order granting development consent or making representations about an application or proposed application. Section 52 provides that the Commission may authorise an applicant or proposed applicant to serve a notice on specified persons, requiring them to give to the applicant the names and addresses of persons who have an interest in the land to which the application relates. The Commission may authorise a person to enter a particular piece of land in order to survey or take levels in connection with various prescribed matters: s 53. Section 54 modifies the rights of entry in relation to Crown land.

Part 6 (ss 55-119) Deciding applications for orders granting development consent

Chapter 1 (ss 55-63) Handling of application by Commission

An application for an order granting development consent can be accepted by the Commission only if it complies with the requirements of s 37: s 55. Sections 56, 57 specify the persons who must be notified of an application for an order granting development consent that the Commission has accepted. By virtue of s 58, the applicant must certify to the Commission that he has complied with s 56. Where the Commission has accepted an application for an order granting development consent that includes a request for authorisation of the compulsory acquisition of land or an interest in or right over land, under s 59 the applicant must give the Commission names and other prescribed information in relation to persons with an interest in the land. Section 60 requires the Commission to notify relevant local authorities of the acceptance of an application for development consent and to invite them to submit a report giving details of the likely impact of the proposed development on their area. Where a Commissioner accepts an application for an order granting development consent, the chair must decide whether the application should be handled by a panel or by a single Commissioner: s 61. Section 62 provides that, where an application for an order granting development consent is being handled by a single Commissioner, the chair can decide that it should instead be handled by a panel. Under s 63, the chair has the power to delegate any of his functions under Pt 6 to one of the deputy chairs, subject to certain specified restrictions.

Chapter 2 (ss 64-77) The panel procedure

Special provisions apply when the Commission has accepted an application and the chair has decided that it should be handled by a panel: s 64. Provision is made for the appointment of the panel (s 65), for when a person ceases to be a member, or the lead member, of a panel (s 66), for when a panel member ceases to be a Commissioner (s 67), for additional appointments to be made to a panel where the panel has fewer than three members (s 68), and for the replacement of the lead member of a panel if the lead member ceases to hold that office (s 69). Under s 70, a panel that considers an application relating to land in Wales must include, if reasonably practicable, a Commissioner who was nominated for appointment as a Commissioner by the Welsh Ministers or any other Commissioner notified to the Commission by the Welsh Ministers as being a Commissioner who should be treated as a Welsh Commissioner nominated by them. If the chair of the Commission decides that an application that was being

considered by a single Commissioner should instead be considered by a panel, the single Commissioner who has considered the case may by virtue of s 71 become a member of the panel. Section 72 provides that, if the panel ceases to have any members, a new panel must be constituted. The identity of the panel is not affected by changes to the membership of the panel or the lead member, or any vacancies: s 73. Section 74 sets out the panel's role in relation to applications, and s 75 provides that a decision of the panel requires the agreement of a majority of its members, with the lead member having the casting vote. Under s 76, during the examination of an application the panel may allocate part of the examination to any one or more of its members. The procedural powers of the panel may, unless the panel decides otherwise, be exercised by any one or more of the panel's members: s 77.

Chapter 3 (ss 78-85) The single-Commissioner procedure

Part 6 Ch 3 has effect where it has been decided that an application should be handled by a single Commissioner: s 78. In that situation, the chair or a deputy chair to the Commission must appoint a Commissioner to handle the application: s 79. Provision is made by s 80 for where a person ceases to be the single Commissioner. By virtue of s 81, a person can in certain circumstances continue to act as a single Commissioner although he is no longer a Commissioner. Section 82 provides that, when a person ceases to be a single Commissioner, a replacement Commissioner must be appointed. Under ss 83, 84, the single Commissioner is responsible for examining the application and making a report to the authority responsible for determining the application. At least five members of the Commission's Council must participate in any decision that requires majority agreement: s 85.

Chapter 4 (ss 86-102) Examination of applications under Chapter 2 or 3

Part 6 Ch 4 applies to the examination of an application by a panel or by a single Commissioner: s 86. Section 87 provides that it is for the examining authority to decide how to examine an application. Under s 88, the examining authority must make an initial assessment of the principal issues arising on an application, before holding a preliminary meeting with the applicant and any interested parties. Section 89 requires the examining authority, in the light of the discussion at the preliminary meeting, to make procedural decisions in respect of the examination of the application, and s 90 provides that the examining authority's examination of the application should take the form of the consideration of written representations subject to any requirements in ss 91-93 and to any decision of the examining authority that it should take a different form. The examining authority must arrange a hearing when it decides that it is necessary for its examination of a specific issue to receive oral representations, either to ensure the adequate examination of the issue or so that an interested party has a fair chance to put its case: s 91. Where an application for a development consent order includes a request for authorisation of compulsory acquisition of land or an interest in or right over land, under s 92 the examining authority must inform affected parties of a deadline by which they must notify the Commission that they require a compulsory acquisition hearing to take place. By virtue of s 93, the examining authority must also arrange an open floor hearing if at least one interested party informs the examining authority of a wish to be heard within the specified deadline. General provision with regard to hearings is made by s 94, and s 95 empowers the examining authority to exclude a person from a hearing if he behaves in a disruptive manner. Where a person has asked to make an oral representation at a hearing, but has not done so, he can make a written representation, which the examining authority must consider as part of its examination of an application: s 96. The Lord Chancellor or, in certain cases, the Secretary of State, may by virtue of s 97 make procedural rules for the examination of applications. Section 98 imposes a duty on the examining authority to complete its examination of an application within six months of the last day of the preliminary meeting held pursuant to s 88. The examining authority must inform each interested party once it has completed its examination of the application: s 99. Under s 100, the chair or a deputy chair of the Commission may, at the examining authority's request, appoint a suitably qualified assessor to help it examine an application. Section 101 allows the chair of the Commission to appoint a barrister, solicitor or

advocate to provide legal advice and assistance to the examining authority. Section 102 deals with interpretation.

Chapter 5 (ss 103-107) Decisions on applications

The Secretary of State is required by s 103 to decide an application for an order granting development consent where he receives a report from the panel or a single Commissioner. Where a panel or the Commission's Council is responsible for deciding an application for an order granting development consent, it must have regard to various specified matters, including any relevant national policy statement and any local impact report submitted by a relevant local authority: s 104. Section 105 provides that, in deciding an application for an order granting development consent, the Secretary of State must have regard to certain prescribed matters. Under s 106, a person deciding an application for an order granting development consent may disregard representations that are vexatious or frivolous or relate to the merits of policy set out in a national policy statement or to compensation payable on the compulsory acquisition of land or of an interest in or right over land. Section 107 specifies that the decision-maker is under a duty to decide an application for a development consent order within a period of three months.

Chapter 6 (s 108) Suspension of decision-making process

By virtue of s 108, if the Secretary of State considers it necessary to review all or part of a relevant national policy statement before an application for an order granting development consent is decided, he may direct that the examination and decision of the application is suspended by the panel or Commission's Council until the review of the national policy statement has been completed.

Chapter 7 (ss 109-113) Intervention by Secretary of State

The various circumstances in which the Secretary of State may intervene and decide an application in place of the Commission are prescribed by ss 109-112. Section 113 details the consequences of the Secretary of State making an intervention, and gives effect to Sch 3, which makes provision in relation to the Secretary of State's function of examining an application.

Chapter 8 (ss 114-117) Grant or refusal

Section 114 provides that, at the conclusion of consideration of an application for an order granting development consent, the decision-maker must either make an order granting development consent or refuse development consent. An order may grant development consent not only for development for which consent is required but also for associated development (as defined): s 115. Under s 116, a statement of reasons for deciding to make an order granting development consent or to refuse development consent must be given to interested parties and published, and under s 117 certain formalities must be observed in relation to the order.

Chapter 9 (s 118) Legal challenges

Section 118 provides that specified decisions in connection with applications for development consent can be challenged only by way of judicial review.

Chapter 10 (s 119) Correction of errors

Section 119 gives effect to Sch 4, which describes the mechanisms by which the decision-maker can correct errors in decision documents relating to an application for an order granting development consent.

Part 7 (ss 120-159) Orders granting development consent

Chapter 1 (ss 120-152) Content of orders

Section 120, Sch 5 specify what may be included in an order granting development consent. Under s 121, the panel or Council must send to the Secretary of State a draft of any proposed order that affects the application of statutory provisions. The purpose for which an order granting development consent can authorise the compulsory acquisition of land are specified in s 122. The decision-maker can authorise the compulsory acquisition of land only if he is satisfied that one of various specified conditions is met: s 123. Section 124 empowers the Secretary of State to issue guidance about the authorisation of the compulsory acquisition of land in an order granting development consent. By virtue of s 125, the Compulsory Purchase Act 1965 Pt 1 (ss 1-32) applies with specified modifications to any order granting development consent that contains provisions on compulsory acquisition of land, unless the order specifies otherwise. The 2008 Act s 126 places restrictions on the provision that may be made about compensation in an order granting development consent that authorises the compulsory acquisition of land. The conditions that must be satisfied for an order granting development consent to authorise the compulsory purchase of land which a statutory undertaker has acquired for the purpose of its undertaking in circumstances where a representation has been made about the application for the order and that representation is not withdrawn are contained in s 127. Section 128 details the circumstances in which an order granting development consent that authorises the compulsory purchase of land belonging to a local authority or statutory undertakers is to be subject to the special parliamentary procedure. Under s 129, the procedure does not apply where the person who would acquire the land is one of certain specified public bodies. In certain circumstances, an order granting development consent that authorises the compulsory purchase of land held inalienably by the National Trust is subject to the special parliamentary procedure: s 130. By virtue of s 131, the special parliamentary procedure also applies in relation to an order granting development consent that authorises the compulsory purchase of land forming part of a common, open space or fuel or field garden allotment, where the acquisition does not involve the acquisition of a new right over that land. An order granting development consent that authorises the compulsory acquisition of a new right over land forming part of a common, open space or fuel or field garden allotment is also subject to the special parliamentary procedure unless the Secretary of State is satisfied of certain facts: s 132. Section 133 modifies some of the usual procedures where an order granting development consent authorises the development of underground gas storage facilities, and authorises the compulsory acquisition of rights to store gas underground or certain other rights over land. Under s 134, a person who has been authorised to acquire land compulsorily by an order granting development consent is required to serve a notice about this on persons with certain interests in that land. An order granting development consent can authorise the compulsory purchase of an interest in Crown land only if the interest is for the time being held otherwise than by or on behalf of the Crown and the appropriate Crown authority consents to the acquisition: s 135. By virtue of s 136, no order granting development consent can be made that extinguishes any public right of way over land unless the authority making it is satisfied that an alternative right of way has been or will be provided, or that such an alternative right of way is not required. An order granting development consent may provide for the acquisition of land and authorise the extinguishment or diversion of a public right of way for non-vehicular traffic over land on which a statutory undertaker has erected apparatus or where electronic communications apparatus is kept installed only if the relevant undertaker or operator of the network has given its consent: s 137. Section 138 makes provision for orders granting development consent that authorise the acquisition of land on, under or over which a statutory undertaker has erected apparatus or where electronic communications apparatus is kept installed. Under s 139, an order granting development consent cannot include provisions that exclude or modify the application of a provision of, or made under, the Commons Act 2006, or authorise the suspension of, or extinguishment or interference with, registered rights of common. An order granting development consent that authorises the operation of a generating station can, by virtue of the 2008 Act s 140, be made only if the development to which the order relates is or includes the construction or extension of the generating station. Section 141 provides that an order granting development consent may authorise overhead electric lines to be kept installed only if the development to which the order relates is or

includes the installation of such lines. An order granting development consent that authorises the use of underground gas storage facilities can be made only if the order authorises the development of such facilities: s 142. Under s 143, an order granting development consent that authorises the diversion of a navigable watercourse can be made only if the new length of watercourse is conveniently navigable by vessels of a kind accustomed to using that part of the watercourse. Section 144 provides that an order granting development consent may authorise the charging of tolls in relation to a highway only if a request for such provision was included in the application for the order. The circumstances in which an order granting development consent may provide for the creation of a harbour authority, the modification of the powers or duties of an existing harbour authority or the transfer of property, rights or liabilities from one harbour authority to another are set out in s 145. Where an order granting development consent authorises the discharge of water into inland waters or underground strata, the person to whom the order is granted does not acquire the power to take water or require discharges to be made from the source of water mentioned in the order: s 146. Under s 147, where an order granting development consent includes certain prescribed provisions in relation to Green Belt land, the panel, the Council or the Secretary of State, as the case may be, must notify the relevant local authorities of the provision made by the order. An order granting development consent may deem a consent under the Coast Protection Act 1949 s 34 to have been given in relation to operations in specified areas: 2008 Act s 148. Section 149 provides that an order granting development consent may deem a licence under the Food and Environment Protection Act 1985 Pt 2 (ss 5-15) to have been issued for operations in specified areas. Under the 2008 Act s 150, an order granting development consent may include provision removing a requirement for a prescribed consent or authorisation to be granted only if the relevant body consents. Section 151 prevents an order granting development consent from excluding or modifying liability under any of the statutory regimes specified. By virtue of s 152, a right to compensation in cases where, as a result of s 158 or the terms of a development consent order, a person would not be able to succeed in a claim for nuisance in respect of works authorised by a development consent order.

Chapter 2 (s 153) Changes to, and revocation of, orders

Section 153 gives effect to Sch 6, which describes the mechanisms by which subsequent modifications or revocations can be made to orders granting development consent.

Chapter 3 (ss 154-159) General

After a development consent order is granted, the development must begin before the end of the period prescribed by the Secretary of State or such other period as is specified in the order: s 154. By virtue of s 155, development is taken to begin as soon as any material operation comprised in or carried out for the purposes of the development begins to be carried out. Section 156 provides that, while a development consent order generally has effect for the benefit of the land mentioned in the order and all those for the time being interested in it, it is possible for the order to make provision to the contrary. Where an order granting development consent grants consent for the erection, extension, alteration or re-erection of a building, the order may specify the purposes for which the building may be used: s 157. Where nuisance proceedings arise out of the carrying out of a development for which consent is granted by an order granting development consent, a defence of statutory authority is provided for by s 158. Section 159 defines 'land' for the purposes of Pt 7.

Part 8 (ss 160-173) Enforcement

A person commits an offence if he carries out development for which development consent is required without such consent (s 160), carries out development in breach of the terms of an order granting development consent or fails to comply with the terms of such a consent without reasonable excuse (s 161). The time limits for bringing charges in relation to the offences created by ss 160, 161 are prescribed by s 162. Local planning authorities and justices of the

peace are given the power under ss 163, 164 to authorise a person to enter land if he has reasonable grounds to suspect an offence is being or has been committed under s 160 or s 161. By virtue of s 165, a person so authorised must produce evidence, if requested, of the authority and state the purpose for entry before entering the land. The rights of entry do not apply to Crown land: s 166. Section 167 enables the relevant local planning authority to serve an information notice on the owner or occupier of land or anyone carrying out work on land or using it for any purpose. A person commits an offence contrary to s 168 if, without reasonable excuse, he fails to comply with any requirement of an information notice within a period of 21 days beginning on the day the notice is served. Where a person has been found guilty of an offence under s 160, the relevant local planning authority may serve a notice requiring the person to remove the unauthorised development and return the land to its previous condition: s 169. Under s 170, where steps have not been taken to comply with a notice of unauthorised development within the stipulated period for compliance, the relevant local planning authority may enter the land and carry out the works required in the notice and recover any expenses reasonably incurred in doing so from the owner of the land. Section 171 authorises the relevant local planning authority to apply to the county court or the High Court for an injunction where it considers it necessary or expedient to prevent an actual or anticipated offence under s 160 or s 161. The application of the enforcement provisions to the Isles of Scilly is dealt with in s 172. Section 173 defines 'relevant local planning authority' for the purposes of Pt 8.

Part 9 (ss 174-201) Changes to existing planning regimes

Chapter 1 (ss 174-178) Changes related to development consent regime

Section 174 enables the promoter of a nationally significant infrastructure project to enter into agreements with local authorities in the same way as a developer seeking planning permission under the Town and Country Planning Act 1990. The 2008 Act s 175 amends the Town and Country Planning Act 1990 to allow owner-occupiers adversely affected by a nationally significant infrastructure project to have the benefit of the existing statutory provisions relating to blight, and the 2008 Act s 176 makes equivalent provision with regard to Scotland. Section 177 amends the Town and Country Planning Act 1990 s 304A(1) to ensure that the Secretary of State may make grants for advice and assistance in connection with applications for development consent under the 2008 Act. Section 178 deals with Scotland.

Chapter 2 (s 179-201) Other changes to existing planning regimes

Sections 179-185 amend the Planning and Compulsory Purchase Act 2004. By virtue of the 2008 Act s 179, a regional planning body may enter into an agreement with the regional development agency for its region regarding the delegation of any of the body's functions. Section 180 makes provision relating to supplementary planning documents and statements of community involvement. Regional spatial strategies and development plan documents must include policies on climate change: ss 181, 182. Under s 183, persons or bodies exercising functions in relation to development plans have a duty to have regard to the desirability of achieving good design. The requirement for the Secretary of State or an inspector to obtain the consent in writing of the applicant and, if different, the owner of the land before he may correct an error in a decision document is removed by s 184. Section 185 provides that, where certain development-related strategies, plans and documents are successfully challenged in the High Court, the judge can give directions as to the steps required for the strategy, plan or document to be accepted. By virtue of s 186, certain local planning authorities in Wales can complete unitary development plans under the Town and Country Planning Act 1990 before embarking on the local development plans required by the 2004 Act. The 2008 Act s 187 gives effect to Sch 7, which makes amendments in relation to the power to decline to determine applications. Sections 188-192 amend the Town and Country Planning Act 1990. The restriction under which local development orders can be made only to implement a policy in a development plan document or a local development plan is removed by the 2008 Act s 188. Under s 189, where

planning permission of a prescribed description granted by a development order or local development order is withdrawn by the issue of directions under powers conferred by that order, compensation is payable only if an application for planning permission for development formerly permitted by that order is made within 12 months of the directions taking effect. Local authorities are empowered by s 190 to make non-material changes to planning permissions. Legal proceedings challenging decisions made in connection with applications for major infrastructure projects must be brought within six weeks of the decision: s 191. Section 192, Sch 8 provide for the transfer of provisions from tree preservation orders into regulations, and s 193 makes transitional provision in regard to tree preservation orders. Section 194 gives effect to Sch 9, which amends the Town and Country Planning Act 1990 by authorising a local authority to override easements and other rights restricting the use of land which it has acquired or appropriated for planning purposes. Under the 2008 Act s 195, the joint determination of certain planning applications and appeals by the Secretary of State and the appropriate minister is disapplied in certain prescribed circumstances. Section 196 requires the Secretary of State to determine the procedure by which certain proceedings under the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990 should be considered, and gives effect to the 2008 Act Sch 10, which makes amendments consequential on the new duty. Section 197 gives effect to Sch 11, which amends various legislation to provide for notices of appeal to be accompanied by prescribed information. Sections 198-201 amend the Town and Country Planning Act 1990. By virtue of the 2008 Act s 198, regulations may be made for the transfer to inspectors of appeals under the Planning and Compensation Act 1991 in respect of old mining permissions for development authorised under interim development orders made between 1943 and 1948. Provision may be made for the whole of the fee payable when an applicant appeals under the Town and Country Planning Act 1990 s 177(5) against an enforcement notice to be paid to either the local planning authority, the appropriate authority, or both the local planning authority and the appropriate authority: 2008 Act s 199. Under s 200, the Secretary of State is entitled to make provision for the payment of a fee for appeals made under the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990. The 2008 Act s 201 amends the definition of 'local authority' in the Town and Country Planning Act 1990 to include the London Fire and Emergency Planning Authority.

Part 10 (ss 202-204) Wales

Section 202 amends the Government of Wales Act 2006 Sch 5 to enable the National Assembly for Wales to pass measures relating to plans of the Welsh Ministers and local planning authorities concerning the development and use of land, subject to an exception regarding the status of such plans. The Welsh Ministers are empowered under the 2008 Act s 203 to make an order giving effect in Wales to certain reforms to the land use planning system provided for in Pt 9 which would otherwise have effect only in England. Transitional provision concerning blighted land is made in relation to Wales by s 204.

Part 11 (ss 205-225) Community infrastructure levy

Section 205 authorises the Secretary of State to establish a community infrastructure levy with the purpose of ensuring that costs incurred in providing infrastructure to support the development of an area can be funded wholly or mainly by owners or developers of land. Under s 206, charging authorities (as defined) can charge a levy in respect of development within their respective areas. Regulations may provide that a joint committee established under the 2004 Act s 29, where it includes a charging authority, is to exercise specified functions in relation to the area of the committee on behalf of the charging authority: 2008 Act s 207. Provision for how liability to pay a levy arises is made in s 208, and s 209 defines various terms used in s 208. By virtue of s 210, charities may be entirely or partially exempt from the levy.

Section 211 requires a charging authority that proposes to charge a levy to issue a charging schedule setting out the rates or other criteria by reference to which the amount is to be calculated. Before a charging schedule is approved, a draft of it must have been examined by a person appointed for that purpose by the charging authority: s 212. The circumstances in which a charging authority may approve a charging schedule are prescribed by s 213. Under s 214, an approved charging schedule does not take effect until it has been published. Section 215 makes provision for appeals in relation to the calculation of the levy due. Regulations concerning the levy must require charging authorities to apply it to funding infrastructure (s 216), must include provision about the collection of the levy (s 217), and must include provision for enforcement (s 218). Under s 219, such regulations may also require a charging or other public authority to pay compensation for loss and damage caused by enforcement action that has been improperly taken by them, and under s 220 they may also make provision about the procedures to be followed in connection with the levy. Section 221 empowers the Secretary of State to give guidance on any matter connected with the levy. Various supplementary powers in relation to the making of regulations regarding the levy are conferred by s 222. Under s 223, regulations dealing with the levy may include provision controlling the use of the Town and Country Planning Act 1990 s 106, which relates to planning obligations, and the Highways Act 1980 s 278, which relates to agreements with highways authorities for highways works. The 2008 Act ss 224, 225 make various amendments and repeals consequential on the establishment of the levy.

Part 12 (ss 226-242) Final provisions

Subject to certain specified exceptions, the 2008 Act applies to the Crown: s 226. 'Crown land' and 'the appropriate Crown authority' are defined by s 227. By virtue of s 228, offences in the 2008 Act do not apply to the Crown. Sections 229-231 make provision concerning the service of notices and other documents. General provision for orders, regulations and directions under the 2008 Act is made by ss 232, 233. Sections 234, 235 deal with interpretation. Schedule 12, which is given effect by s 236, makes various modifications to the 2008 Act in its application to Scotland. An order-making power is conferred on the Secretary of State by s 237. Section 238 gives effect to Sch 13, which makes various repeals. Section 239 makes financial provision, s 240 deals extent, s 241 makes provision concerning commencement and s 242 specifies the short title.

Amendments, repeals and revocations

Subscribers should note that the lists below mention repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. This information may also be found in the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet. Please also note that this list is not exhaustive.

Specific provisions of a number of Acts are amended or repealed. These include: Town and Country Planning Act 1990 ss 61A(1), 78, 195, 198(3), (4), (6), (8), (9), 199, 201, 202(3), 203-205, 208, 212(4); Sch 1 para 17, Sch 1A para 9; Environmental Protection Act 1990 Sch 13 para 10; Planning and Compensation Act 1991 s 6(6); Planning and Compulsory Purchase Act 2004 ss 15(2)(a), (c), 17(1), (2), 18(4)-(6), 42(3), 46-48, 53, 122(5)(a), Sch 6 para 5; Greater London Authority Act 2007 s 36.

POLICING AND CRIME ACT 2009

The Policing and Crime Act 2009 makes provision (1) about the police; (2) about prostitution, sex offenders, sex establishments and certain other premises; (3) for reducing and dealing with the abuse of alcohol; (4) about the proceeds of crime; (5) about extradition; (6) amending the Aviation Security Act 1982; (7) about criminal records, including amendments to the Safeguarding Vulnerable Groups Act 2006; (8) conferring, extending and facilitating search, forfeiture and other powers relating to the United Kingdom's borders and elsewhere; and (9) for combatting crime and disorder. The 2009 Act received the royal assent on 12 November 2009 and ss 100, 111, 112(3)-(9), 113-117 and Sch 8 (in part) came into force on that date. Sections 88 and 91 came into force on 30 November 2009, and ss 6-9, 26, 51, 61, 62, 64, 67-78, Schs 7 (in part) and 9 (in part) came into force on 25 January 2010: SI 2009/3096. The 2009 Act Schs 7 (in part) and 8 (in part) came into force on 12 January 2010: s 116(6). Sections 98, 99, 101, 112 (in part) and Sch 8 (in part) came into force on 25 January 2010: SI 2010/52. The 2009 Act ss 10-13, 28-33, 79, 80, 83, 84 (for certain purposes), 97, 110, Schs 4, 6, Sch 7 paras 27-44, and Sch 8 (in part) came into force on 29 January 2010: SI 2010/125. The 2009 Act s 1 came into force on 15 March 2010: SI 2010/125. The 2009 Act ss 3, 4, 112 (in part) and Sch 8 (in part) came into force on 19 April 2010: SI 2010/999. The 2009 Act s 112 (in part), Sch 7 (in part) came into force in relation to Wales only on 8 May 2010: SI 2010/999. The 2009 Act s 2 comes into force on 1 September 2010: SI 2010/999. The remaining provisions come into force on a day or days to be appointed. For details of commencement, see the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet.

Part 1 (ss 1-13) Police reform

Sections 1-5 amend the Police Act 1996. By virtue of the 2009 Act s 1, police authorities are required, when discharging any of their functions, to have regard to the views of the public in their area concerning policing. Section 2 establishes the Police Senior Appointments Panel, which has the function of advising the Secretary of State on any matter on which it is consulted by the Secretary of State in connection with senior officer appointments, on consents to deputy chief constables and assistant chief constables fulfilling the role of the chief constable for a period exceeding three months, and on consents for the second most senior officer in the City of London police to act as Commissioner for a particular period. Under s 3, regulations under the 1996 Act s 50 may make provision for payments to be made to senior officers who cease to serve before the end of their fixed-term appointment. The 2009 Act s 4 gives the Commissioner a formal role in appointments to the ranks of Assistant Commissioner, Deputy Assistant Commissioner and Commander in the Metropolitan Police. By virtue of s 5, agreements may be made between chief officers of police forces to carry out their functions through collaboration in the interests of the efficiency or effectiveness of policing. Section 6 amends the Police Act 1997 s 93 to enable an authorising officer acting under s 93(5)(a)-(c) to grant an authorisation to interfere with property on an application made by a member of the officer's own police force or by a member of another police force. The 2009 Act ss 7-9 amend the Regulation of Investigatory Powers Act 2000. The 2009 Act s 7 empowers a person who is a designated person by reference to an office, rank or position with a police force to grant an authorisation for persons holding offices, ranks or positions with another police force to obtain communications data under the 2000 Act. Under the 2009 Act s 8, arrangements equivalent to those in the 2000 Act s 29(5) must be in force in relation to sources of police collaborative units comprising two or more police forces. A person who is a designated person for the purposes of s 28 or 29 by reference to his office, rank or position with a police force is entitled to grant an authorisation under s 28 or 29 on an application made by a member of another police force: 2009 Act s 9. Section 10 amends the 1996 Act to provide for an order-making power to amend s 97 to add further types of service that qualify as relevant service outside a police officer's own force. The 1996 Act is also amended by the 2009 Act s 11 so that the Secretary of State

may make regulations concerning software used by the police. By virtue of ss 12 and 13, regulations requiring police forces to adopt particular procedures or practices or concerning common facilities or services need not apply to all police forces.

Part 2 (ss 14-27) Sexual offences and sex establishments

Section 14 amends the Sexual Offences Act 2003 by creating a strict liability offence which is committed if someone pays or promises payment for the sexual services of a prostitute who has been subject to exploitative conduct of a kind likely to induce or encourage the provision of sexual services for which the payer has made or promised payment. Equivalent provision is made in relation to Northern Ireland by the 2009 Act s 15. Section 16 amends the offence of loitering or soliciting for the purposes of prostitution, as set out in the Street Offences Act 1959 s 1, by introducing a requirement that the conduct must have been carried out at least twice in any three-month period. The 1959 Act is also amended by the 2009 Act s 17, Sch 1, which introduce a new penalty for those convicted of loitering or soliciting for the purpose of prostitution, allowing the court to make a rehabilitative order instead of imposing a fine or any other penalty. Section 18 amends the Rehabilitation of Offenders Act 1974 s 5 to apply a rehabilitation period of six months for those sentenced to an order following conviction for loitering or soliciting. Under the 2009 Act s 19, a new offence of soliciting is created which replaces the offences of kerb-crawling in a street or public place and persistent soliciting in a street or public place for the purposes of prostitution. Equivalent provision is made in relation to Northern Ireland by s 20. The courts are empowered by s 21, Sch 2 to close, on a temporary basis, premises being used for activities related to certain sexual offences. Sections 22-25 amend the Sexual Offences Act 2003. The Magistrates' Courts Act 1980 s 127 is disapplied by the 2009 Act s 22 in relation to applications for civil orders made under the Sexual Offences Act 2003 Pt 2 (ss 80-136). The 2009 Act s 23 raises the age of a child that must be at risk in order for a foreign travel order to be made, and s 24 extends, from six months to five years, the maximum duration of such an order. By virtue of s 25, offenders who are subject to a foreign travel order that prohibits them from travelling anywhere outside the United Kingdom must surrender their passports at a police station specified in the order. The 2000 Act s 53 is amended by the 2009 Act s 26 so that a maximum sentence of five years' imprisonment can be imposed in relation to cases involving the showing, taking or possessing an indecent photograph of a child. Section 27, Sch 3 add a new category of sex establishment called a 'sexual entertainment venue' to the Local Government (Miscellaneous Provisions) Act 1982 Sch 3, which brings the licensing of lap dancing and pole dancing clubs and other similar venues under the regime set out in the Local Government (Miscellaneous Provisions) Act 1982, which is currently used to regulate establishments such as sex shops and sex cinemas.

Part 3 (ss 28-33) Alcohol misuse

Section 28 amends the offence of persistently selling alcohol to children so that the offence is committed if alcohol is sold to an individual under the age of 18 on two or more occasions within three months rather than on three or more occasions within three months. The Confiscation of Alcohol (Young Persons) Act 1997 is amended by the 2009 Act s 29 so that police officers can confiscate sealed containers of alcohol from young persons in public places without needing to prove that they were consuming alcohol or that they intended to consume alcohol in a public place. A person under the age of 18 commits an offence contrary to s 30 if he is caught with alcohol in a public place three or more times within a 12-month period. Section 31 amends the Violent Crime Reduction Act 2006 s 27(1) so that the police can issue directions to leave to persons between the ages of 10 and 15. The 2009 Act s 32 gives effect to Sch 4, which makes provision about mandatory licensing conditions relating to alcohol. Section 33 amends the Licensing Act 2003 ss 13 and 69 to allow members of a licensing authority to act as interested parties.

Part 4 (ss 34-50) Injunctions: gang-related violence

Section 34 enables the court to grant an injunction in order to prevent a person from engaging in, encouraging or assisting gang-related violence (as defined) and/or to protect a person from gang-related violence. The possible effects that prohibitions or requirements contained in the injunction could have on the person are listed in s 35. Supplementary provision relating to such injunctions is made by s 36, including in relation to time limits and review hearings. Under s 37, an application for an injunction can be made by the police or a local authority. Before applying for an injunction, the applicant authority must consult with any local authority, any chief officer of police and any other body or individual that the applicant thinks it appropriate to consult: s 38. Provision for without notice applications is made by s 39. Section 40 prescribes the powers of the court to grant an interim injunction where the court adjourns a hearing of which notice has been given to the respondent. The court's powers to grant an injunction where it adjourns the hearing of an application which has been made without notice are specified in s 41. Provision is made by s 42 for the variation and discharge of an injunction. Under s 43, if a power of arrest has been attached to any of the prohibitions or requirements contained in an injunction, a police officer may arrest without warrant a respondent who is reasonably suspected to be in breach of that prohibition or requirement. Section 44 allows a court to grant a warrant for arrest if it believes that the respondent is in breach of any provision of the injunction. If a person has been arrested, with or without a warrant, s 45 empowers the court to remand a person for the purpose of medical examination and report if it has reason to consider that such a report will be required. Section 46 gives effect to Sch 5, which makes further provision about the powers to remand under ss 43 and 44. The Secretary of State is required by s 47 to issue and publish guidance in relation to injunctions. Rules of court may be made which provide that powers conferred on county courts are exercisable by judges of a county court and district judges: s 48. Section 49 defines various terms used in Pt 4. Under s 50, the Secretary of State is required to review the operation of Pt 4 and prepare and publish a report of that review.

Part 5 (ss 51-66) Proceeds of crime

Part 5 amends the Proceeds of Crime Act 2002. By virtue of the 2009 Act s 51, receivers from the Crown Prosecution Service and Revenue and Customs Prosecutions Office, along with accredited financial investigators and members of staff of other departments and public bodies, are entitled to deduct their expenses from recovered sums when they are appointed as receivers pursuant to the 2002 Act s 48 or 50. An appropriate officer (as defined) can continue to retain property that has been or may be seized under a specified seizure power if that property is also subject to a restraint order: 2009 Act s 52. Sections 53 and 54 make equivalent provision in relation to Scotland and Northern Ireland. Section 55 provides for search and seizure powers to prevent the dissipation of realisable property that may be used to satisfy a confiscation order. Sections 56 and 57 make equivalent provision in relation to Scotland and Northern Ireland. By virtue of s 58, property that has been seized by an appropriate officer under a relevant seizure power, or which has been produced to such an officer in compliance with a production order under the 2002 Act s 345, may in certain circumstances be sold to meet a confiscation order. The 2009 Act ss 59 and 60 make comparable provision in relation to Scotland and Northern Ireland. Section 61 adds the Serious Organised Crime Agency to the list of enforcement authorities that are liable to pay compensation to a person whose property has been affected by the enforcement of confiscation legislation. Under s 62, the limitation period for actions for the civil recovery of property obtained through unlawful conduct under the 2002 Act Pt 5 Ch 2 (ss 243-288) is extended from 12 to 20 years. An officer can require the search of a vehicle if he has reasonable grounds for suspecting there is cash in the vehicle which is recoverable property or intended for use in unlawful conduct: 2009 Act s 63. Section 64 provides that the period during which cash seized under the 2002 Act s 294 can be detained

may be extended for a period of six months. By virtue of the 2009 Act s 65, law enforcement agencies may forfeit detained cash without a court order in uncontested cases. Section 66 transfers the jurisdiction for applications relating to detained cash investigations from a High Court judge to a judge entitled to exercise the jurisdiction of the Crown Court.

Part 6 (ss 67-78) Extradition

Part 6 amends the Extradition Act 2003. The 2009 Act ss 67 and 68 ensure that the United Kingdom is in a position to deal with alerts transmitted via the second generation Schengen Information System which request the arrest of a person for extradition purposes. By virtue of ss 69 and 70, an appropriate judge is permitted to adjourn extradition proceedings on the basis of a domestic sentence after a person has been brought before him before the extradition hearing has begun. Section 71 clarifies that, where consideration of an extradition request is deferred in order to allow domestic proceedings to be concluded or a prison sentence to be served, consideration of the extradition request should recommence once the person is released from detention pursuant to any sentence imposed. Provision is made by s 72 for the treatment of persons who are serving a sentence of imprisonment in the United Kingdom, are extradited to a category 1 territory under a European Arrest Warrant, and then return to the United Kingdom. Corresponding provision is made in s 73 for persons who return to the United Kingdom after being extradited to a category 2 territory. Section 74 provides a regime within which the United Kingdom will be able to provide undertakings as to a person's treatment in the United Kingdom and eventual return to a requested territory. The protection afforded by the Extradition Act 2003 s 152 applies where a person is extradited to the United Kingdom from a territory which is neither a category 1 nor a category 2 territory: 2009 Act s 75. Section 76 deals with situations in which the United Kingdom would want to deal with an offence committed by a person previously extradited to the United Kingdom for the purposes of prosecution for a different offence. Under s 77, weekends and certain specified holidays are excluded from the calculation of the 48-hour period during which a person provisionally arrested under the Extradition Act 2003 s 5 must be brought before, and relevant documents provided to, the appropriate judge. The 2009 Act s 78 enables a judge to give a live link direction in hearings before the judge other than the extradition hearing itself and other than any extradition proceedings which postdate surrender.

Part 7 (ss 79, 80) Aviation security

Section 79 amends the Aviation Security Act 1982 by making provision for the establishment of Risk Advisory Groups and Security Executive Groups at aerodromes. The 2009 Act s 80 gives effect to Sch 6, which makes further amendments to the Aviation Security Act 1982 supplementary to and consequential on the creation of these bodies.

Part 8 (ss 81-111) Miscellaneous

Chapter 1 (ss 81-97) Safeguarding vulnerable groups and criminal records

Section 81 renames the Independent Barring Board as the Independent Safeguarding Authority and makes consequential amendments to various enactments. Sections 82-89 amend the Safeguarding Vulnerable Groups Act 2006. The effect of the 2009 Act s 82 is that a person who is required under the Safeguarding Vulnerable Groups Act 2006 s 13 to make a check on a member of a governing body (a 'governor') of an educational establishment does not commit an offence if the governor fails to consent to the check or fails to provide the appropriate officer with any information necessary to make the check. The 2009 Act s 82 also makes it an offence for a governor to act as a member of a governing body before consenting to the check or providing the appropriate officer with any information required to carry out the check. The

Secretary of State is entitled to determine the form, manner and content of the form for applying to become subject to monitoring pursuant to the Safeguarding Vulnerable Groups Act 2006 s 24: 2009 Act s 83. Section 84 makes provision for the payment of a fee by persons who are subject to monitoring and have benefited from a free application to the monitoring scheme as a volunteer, if they subsequently enter paid employment in activities regulated under the Safeguarding Vulnerable Groups Act 2006. The requirements arising from the declaration to be made by persons eligible to receive vetting information under s 30 or information about the cessation of monitoring under s 32 are revised by the 2009 Act ss 85 and 86. Section 87 creates an additional duty and confers a further power on the Independent Safeguarding Authority in circumstances where it proposes to bar an individual from working with children or vulnerable adults. Under s 88, the Independent Safeguarding Authority is empowered to provide information that it holds to the police for use by the police for any of various specified purposes. It is the Independent Safeguarding Authority rather than the Secretary of State that must now be satisfied that a person has met the prescribed criteria for automatic barring before the Authority is required to bar him: s 89. Sections 90-92 make provision in relation to Northern Ireland equivalent to that made by ss 87-89. By virtue of s 93, a copy of a person's criminal conviction certificate is to be sent to an employer where specifically requested. Section 94 amends the Police Act 1997 to provide for 'right to work' information to be recorded on basic, standard and enhanced disclosures where a request for such information is made. The 2009 Act s 95 allows for other methods of identity verification to be prescribed under the Police Act 1997 s 118 when making an application for a criminal conviction certificate. The Criminal Records Bureau is authorised to check the suitability of individuals to be registered to countersign and receive standard and enhanced disclosures against the new barred lists established under the Safeguarding Vulnerable Groups Act 2006: 2009 Act s 96. The Police Act 1997 is amended by the 2009 Act s 97 so that the Secretary of State may determine the form, manner and contents of applications for criminal records disclosures.

Chapter 2 (ss 98-111) Other

Section 98 amends the Customs and Excise Management Act 1979 by enabling an officer of Revenue and Customs to require a person entering or leaving the United Kingdom to produce his passport or travel documents and answer questions about his journey. The 1979 Act is also amended by the 2009 Act s 99, which clarifies the powers available to officers at the border to ask questions about, and to search for, cash that is recoverable property or is intended by any person for use in unlawful conduct. Section 100 clarifies that the protection from interception afforded to postal communications in the 2000 Act does not restrict Revenue and Customs' powers to check international postal traffic for customs or excise purposes. A prohibition on the importation and exportation of false identity documents is created by the 2009 Act s 101. Section 102 amends the Criminal Justice Act 1988 by empowering the Secretary of State to specify weapons for the purposes of the prohibition on importation. The 2009 Act s 103 amends the Football Spectators Act 1989 so that those subject to banning orders in England and Wales are also banned from attending regulated football matches in Scotland and Northern Ireland. Under the 2009 Act s 104, when an individual is directed to report to police by the court or an enforcing authority, the specified police station may be anywhere in the United Kingdom and thus local to the individual's place of residence. Section 105 deals with the enforcement of the 1989 Act in Scotland and Northern Ireland. The offence of failing to comply with the requirements of a Scottish banning order or a notice issued by the Scottish Football Banning Orders Authority and the offence of giving false information in connection with an application for an exemption are extended to England and Wales by the 2009 Act s 106. Section 107 adds to the list of relevant offences for the purposes of the 1989 Act Pt 2 (ss 14-22A) (1) failing to comply with a requirement made on initially reporting to the police in respect of an English and Welsh imposed order; and (2) knowingly making false statements in relation to an application for an exemption to the English and Welsh enforcing authority. Under the 2009 Act s 108, every provider of probation services in a particular area whose arrangements under the Offender Management Act 2007 s 3 provide for it to be a responsible authority is to be added to the list

of responsible authorities which comprise Crime and Disorder Reduction Partnerships (in England) or Community Safety Partnership (in Wales) in that area. The Serious Organised Crime and Police Act 2005 is amended by the 2009 Act s 109 by the creation of three exceptions to the general rule that employees of the Serious Organised Crime Agency are not servants of the Crown. Section 110 amends the Firearms Act 1968 so that certain provisions of the 1968 Act apply to a member of the Scottish Crime and Drug Enforcement Agency in the same way as they apply to a member of a police force and a member of staff of the Serious Organised Crime Agency. The requirement that a constable who wishes to obtain a warrant under the Misuse of Drugs Act 1971 s 23(3) to enter and search premises must be acting for the police area within which the premises are situated is removed by the 2009 Act s 111.

Part 9 (ss 112-117) General

Sections 112 and 113 prescribe the order-making power of the Secretary of State for the purposes of the 2009 Act. Section 112 also gives effect to Sch 7, which makes minor and consequential amendments, and Sch 8, which makes various repeals and revocations. Section 114 makes financial provision, s 115 deals with extent, s 116 makes provision for commencement, and s 117 specifies the short title.

Amendments, repeals and revocations

Subscribers should note that the lists below mention repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. Please also note that these lists are not exhaustive.

The following Act is repealed in full: Sexual Offences Act 1985.

Specific provisions of a number of Acts are added, amended or repealed. These include: Street Offences Act 1959 s 2; Aviation Security Act 1982 ss 25, 25A, 30; Prosecution of Offences Act 1985 s 22A; Crime and Disorder Act 1998 ss 14, 15, 44; Criminal Justice and Police Act 2001 ss 48, 49; Vehicles (Crime) Act 2001 s 36; Police Reform Act 2002 s 84; Proceeds of Crime Act 2002 s 45; Extradition Act 2003 ss 143, 144, 151; Drugs Act 2005 s 2; Serious Organised Crime and Police Act 2005 s 120; and Serious Crime Act 2007 s 78.

Halsbury's Laws of England/STOP PRESS/POLITICAL PARTIES AND ELECTIONS ACT 2009

POLITICAL PARTIES AND ELECTIONS ACT 2009

The Political Parties and Elections Act 2009 makes provision in connection with the Electoral Commission, about political donations, loans and related transactions, about political expenditure, and about elections and electoral registration. The Act received the royal assent on 21 July 2009 and ss 1 (in part), 4, 5, 7, 22, 32 (in part), 38, 40-44, Schs 5, 6 (in part), 7 (in part) came into force on that day. Sections 23 and 24, Sch 6 paras 1-5, 8 and various repeals in Sch 7 came into force on 4 September 2009: SI 2009/2395. Section 21, Sch 6 paras 6, 7, and a repeal in Sch 7 came into force on 25 November 2009, and ss 12-18, 20, Sch 6 para 24, and various repeals in Sch 7 came into force on 1 January 2010: SI 2009/3084. The remaining provisions come into force on a day or days to be appointed.

Part 1 (ss 1-8) The Electoral Commission

Section 1 provides that, in addition to its existing function of monitoring compliance with certain requirements relating to registered party accounting, political donations, campaign and election expenditure, and referendums, the Commission has the function of taking appropriate steps to secure compliance with those requirements and allows it to publish guidance as to what conduct it considers to be necessary or sufficient in order to comply with the legislative requirements, and what conduct it considers to be desirable in view of the purpose of such requirements. Section 2, Sch 1 make provision about the investigatory powers of the Commission, by enabling it to require access to information for certain purposes, including where it is conducting an investigation into a potential criminal offence, and, where a criminal investigation is not being conducted, in relation to limited categories of individual or body and only after obtaining a warrant from a magistrate, to enter premises to inspect and make copies of relevant documents; and make provision as to the penalties for offences in relation to such investigations. The Commission has new powers under s 3, Sch 2 to apply a range of civil sanctions to offences and contraventions under the Political Parties, Elections and Referendums Act 2000. The 2009 Act s 4 expands the series of requirements for the appointment of Electoral Commissioners and the Commission chairman so that each person proposed for appointment must have been selected in accordance with a procedure put in place and overseen by the Speaker's Committee. Section 5 makes provision facilitating the appointment to the Commission of four Electoral Commissioners who are persons put forward by the parties, sets out requirements about their selection and imposes certain restrictions to prevent the appointment of two or more such Commissioners from the same political party and to prevent such a Commissioner from being appointed to a Boundary Committee. By virtue of s 6, there must be not less than nine or ten Electoral Commissioners. A person may not be appointed as an Electoral Commissioner within five years of engaging in certain political activities, and existing political restrictions imposed on certain staff are reduced: s 7. Section 8 removes the duty imposed on the Electoral Commission to promote awareness of current and pending systems of local and national government and the institutions of the European Union.

Part 2 (ss 9-22) Political donations etc and expenditure

Section 9 requires a person who causes money to be received by a registered party to make a written declaration in respect of a donation over a single threshold of £7,500, irrespective of whether the donation is made to a party's central organisation or to a local accounting unit of the same party, prohibits the party from accepting the donation if no such declaration has been made, and makes it a criminal offence for a person knowingly or recklessly to make a false declaration about a donation.

A registered party is prohibited by s 10 from accepting a donation of more than £7,500 from an individual who is not resident, ordinarily resident and domiciled in the United Kingdom for the purposes of income tax, and requires donors who are individuals to give a declaration as to whether they satisfy this condition.

Section 11 makes similar provision in relation to regulated transactions with non-resident lenders by requiring an individual who is a party to such a transaction to give a declaration confirming that he satisfies the residency condition. Section 12 provides a defence to a charge of failing to return a donation accepted from an impermissible donor so that, if a party or a treasurer is charged with such an offence, he will not be guilty if he can show that he took all reasonable steps to verify that the donor was a permissible donor and, having done so, believed that such was the case. Section 13 provides that, in determining whether any of certain specified offences relating to the reporting of accounts, donations and loans and associated defences has been committed, there must be considered whether there is a reasonable excuse for the act or omission in question; and removes the existing separate defence to each offence of having taken all reasonable steps or having exercised all due diligence to ensure that the relevant act or omission did not occur. Section 14 requires a members association with no treasurer to appoint a responsible person, in circumstances where

the association is in receipt of a reportable permissible donation, or an impermissible recordable donation above £500, and sets out the procedure to be followed in appointing such a person. Section 15 provides for the appointment of compliance officers to assist holders of relevant elective office with their obligations to report donations. Section 16 amends provisions relating to control of loans to members associations, and s 17 enables a compliance officer to assist a holder of elective office with his obligations in relation to the reporting of regulated transactions.

A person is prohibited by s 18 from being a responsible person for more than one third party. By virtue of s 19, Sch 5, an unincorporated association which makes, in a calendar year, a political contribution of more than £25,000 to any recipient, including political parties, regulated by the 2000 Act will be subject to a new reporting regime in respect of gifts of a certain value received by it within a specified period. The donation thresholds are increased (s 20); and pre-candidacy election expenses for certain general elections are limited (s 21). An additional power is conferred on the Electoral Commission by s 22 to issue guidance about the circumstances in which election expenses are to be regarded as having been incurred for the purpose of a candidate's election.

Part 3 (ss 23-27) Elections

New arrangements are made by s 23 to expedite the registration of eligible electors in the event of an election falling within a canvass period. A candidate at a parliamentary election is entitled under s 24 to withhold his home address from publication. Section 25 applies to Scotland, and s 26 applies to Northern Ireland. Section 27 provides for the proper officer of the Greater London Authority to be eligible to be designated by the Secretary of State as a returning officer for European Parliamentary elections in a region in England and Wales.

Part 4 (ss 28-37) Electoral registration

Section 28 provides for the establishment, by order made by the Secretary of State, of one or more Co-ordinated On-line Record of Electors ('CORE') schemes; and for any such scheme to be run by a CORE keeper designated by the Secretary of State and for electoral registers and related information to be consolidated into a centralised record maintained by the electoral registration officers in the area covered by the scheme. The use of CORE information is subject to the conditions or restrictions set out in s 29. By virtue of s 30, registration officers are required, after 1 July 2010, to take steps to collect identifying information from eligible electors for the purpose of improving the accuracy of the electoral register but the officer must explain that an elector is not obliged to provide such information. Regulations may be made under s 31 amending or supplementing s 30. The Electoral Commission is required by s 32 both to monitor the operation of s 30 and any supplementary regulations and to submit to the Secretary of State an annual report which must contain a recommendation which will help to determine whether the voluntary provision of identifying information by electors should become obligatory. Section 33 amends the Representation of the People Act 1983 in the event that the provision of identifying information becomes obligatory, and the 2009 Act s 34 makes supplementary provision enabling the Secretary of State, after consulting the Electoral Commission, to amend provisions of the 1983 Act relating to the obligatory collection of identifiers. Section 35 enables the Secretary of State to create by order a scheme which requires a public or local authority to supply a registration officer with data which the authority can use for the purpose of maintaining a complete and accurate electoral register and ensuring that any other information it holds on electors is accurate. An order may not be made under s 35 unless the procedural steps, set out in s 36, concerning proposals, consultation and evaluation have been followed. Section 37 defines certain expressions relating to registration.

Part 5 (ss 38-44) General

Section 38 defines 'the 1983 Act' and 'the 2000 Act'. Provision is made by the 2009 Act s 39, Schs 6, 7 for minor and consequential amendments and repeals. Section 40 makes transitional provision, and s 41 provides for circumstances where the provisions of the 2009 Act cause any increase in sums paid under other Acts. Section 42 deals with extent, s 43 with commencement, and s 44 with the short title.

Amendments, repeals and revocations

Subscribers should note that the list below mentions repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. This information may also be found in the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet. Please also note that the list is not exhaustive.

Specific provisions of a number of Acts are amended or repealed. These include: Representation of the People Act 1983 ss 10, 10A, 13, 13A, 63, 65A, 70, 76A, 90ZA, Schs 1, 2, 4A; Political Parties, Elections and Referendums Act 2000 ss 1, 3, 13, 15, 47, 54-56, 58, 62, 65, 67, 71H, 71L, 71S, 71U, 88, 145-149, 156, 160, Schs 1, 6, 6A, 7, 7A, 11, 15, 20; European Parliamentary Elections Act 2002 ss 5, 6; Electoral Administration Act 2006 ss 1, 2, 6, 62.

Halsbury's Laws of England/STOP PRESS/SAVING GATEWAY ACCOUNTS ACT 2009

SAVING GATEWAY ACCOUNTS ACT 2009

The Saving Gateway Accounts Act 2009 makes provision relating to Saving Gateway accounts. The Act received the royal assent on 2 July 2009 and the following provisions came into force on that day: ss 29, 31-33. Sections 4(1), 5(1), 18, 23(1)(a), 24 (in part), 25 (in part) came into force on 1 January 2010: SI 2009/3332. Sections 1, 2(1) (in part), 2(2), (3), 3, 4(2)-(5), 5(2), 6-17, 19-22, 23(1)(b)-(e), (2)-(4), 24 (in remainder), 25 (in remainder), 26, 28, 30 came into force on 1 July 2010: SI 2010/921. Section 2(1) (in remainder) came into force on 1 March 2011: SI 2010/921.

Section 1 defines 'Saving Gateway account'. Section 2 provides that the Commissioners for Her Majesty's Revenue and Customs must issue a notice of eligibility to each eligible person. Section 3 provides that an 'eligible person' is a person entitled to one or more of the following benefits or tax credits and who has a connection with the United Kingdom of a kind prescribed by regulations: (1) income support; (2) employment and support allowance; (3) jobseeker's allowance; (4) incapacity benefit; (5) severe disablement allowance; (6) a carer's allowance under the Social Security Contributions and Benefits Act 1992 s 70; (7) child tax credit; and (8) working tax credit. A Saving Gateway account may be held only with a person (an 'approved account provider') who has been approved by the Commissioners in accordance with regulations: 2009 Act s 4. Regulations under s 4 may include provision enabling the Commissioners to impose conditions on an approved account provider and to withdraw approval of an account provider: s 5. Under s 6, a person who receives a notice of eligibility may apply to open a Saving Gateway account with an approved account provider. Regulations may make provision about the circumstances in which a Saving Gateway account held with one account provider may be transferred to another and the procedure to be followed on a transfer: s 7. Section 8 provides that the maturity payment in relation to a Saving Gateway account is to be calculated by multiplying A by B where A is the number of whole pounds in the qualifying balance of the account and B is an amount of money, in pence, specified in regulations.

Regulations may make provision requiring an account provider to send statements of account to the holder of a Saving Gateway account, specify the form and content of a statement and specify how often a statement is to be sent: s 9. By virtue of s 10 an account may cease to be a Saving Gateway account. Under s 11 a person who is or was an approved account provider may be required to submit returns of information relating Saving Gateway accounts, or former Saving Gateway accounts, to the Commissioners. Section 12 deals with the recovery of payments by the Commissioners. Regulations may provide for interest to be payable, in prescribed circumstances, on any amount payable to the Commissioners under or by virtue of the 2009 Act: s 13. Section 14 makes provision for relief from income tax and capital gains tax. A Saving Gateway account to which s 15 applies is to be treated as an alternative finance arrangement. Section 16 deals with the transfer of funds on an account ceasing to be a Saving Gateway account. Section 17 makes provision for information to be supplied by relevant persons. Section 18 enables information held by the Department of Work and Pensions to be supplied to the Commissioners for the purposes of the Saving Gateway. Section 19 concerns penalties for giving incorrect information. Section 20 specifies penalties for the failure to submit a return. Section 21 makes provision for penalties incurred for non-compliance by an account provider. Section 22 concerns decisions and notices regarding penalties. A person may appeal against a decision by the Commissioners (a) not to approve the person as an approved account provider; (b) to withdraw the person's approval; (c) not to pay to the person an amount claimed; (d) not to issue a notice of eligibility to the person; (e) that an account held by the person is not a Saving Gateway account: s 23. Notice of an appeal under s 23 must be given to the Commissioners within 30 days after the date on which notice of the decision was given: s 24. Section 25 concerns jurisdiction and powers of the relevant tribunal on appeals. The Commissioners must make arrangements for an independent review of the effect of Saving Gateway accounts: s 26. Section 27 concerns Northern Ireland. Any power to make an order or regulations under the 2009 Act is exercisable by the Treasury by statutory instrument: s 28. Section 29 provides that any expenditure incurred by the Commissioners by virtue of the 2009 Act is to be paid out of money provided by Parliament. Section 30 provides for interpretation. Section 31 deals with commencement, s 32 with extent and s 33 with short title.

Amendments, repeals and revocations

Subscribers should note that the list below mentions repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. Please also note that the list is not exhaustive.

Specific provisions of a number of Acts are added, amended or repealed. These include: Social Security Administration Act 1992 s 121F; Social Security Administration (Northern Ireland) Act 1992 s 115E; Northern Ireland Act 1998 Sch 2 para 9B.

Halsbury's Laws of England/STOP PRESS/THIRD PARTIES (RIGHTS AGAINST INSURERS) ACT 2010

THIRD PARTIES (RIGHTS AGAINST INSURERS) ACT 2010

The Third Parties (Rights against Insurers) Act 2010 makes provision about the rights of third parties against insurers of liabilities to third parties in the case where the insured is insolvent. The Act received the royal assent on 25 March 2010 and comes into force on a day or days to be appointed. For details of commencement, see the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet.

Section 1 sets out when a statutory transfer of rights occurs and specifies when the third party may enforce those rights. A new mechanism is introduced by s 2 to enable a third party to bring proceedings against an insurer without first establishing the fact and amount of the insured's liability. Section 3 deals with Scotland. Section 4 lists the circumstances in which an individual is a 'relevant person' for the purposes of the 2010 Act. By virtue of s 5, a statutory transfer from a deceased insured takes place only where the debtor dies insolvent subject to a liability against which he is insured. Section 6 lists the circumstances in which a body corporate or an unincorporated body is a 'relevant person' for the purposes of the 2010 Act. Section 7 deals with Scotland. Under s 8, a third party does not receive a right to recover from the insurer any amounts in excess of the insured's liability. By virtue of s 9, the rights transferred to the third party are subject to all of the defences which the insurer could use against the insured, but for three specified exceptions, which prevent an insurer from defeating a third party's claim by relying on certain technical defences, based on conditions in the insurance contract. The insurer's rights to deduct money owed to it by the insured from the monies payable to the third party is preserved by s 10. Section 11 introduces Sch 1, which confers on the third party rights to obtain information about the insurance policy. Section 12 sets out rules governing when an action to enforce rights transferred by the 2010 Act will be time-barred. Section 13 sets out what is to happen in cases in which the third party is domiciled in one part of the United Kingdom and the insurer is domiciled in another. Section 14 sets out the effect of the statutory transfer on the third party's rights against the insured. By virtue of s 15, the 2010 Act does not apply where the liability incurred referred to in s 1(1) is itself a liability incurred by the insurer under a contract of insurance. By virtue of s 16, a third party will be able to make a direct claim against an insurer even if the insurance covered liabilities voluntarily-incurred by the insured. An insurance contract is prevented by s 17 from being drafted so as to nullify the effect of the 2010 Act. By virtue of s 18, the 2010 Act will apply irrespective of whether the case has any foreign elements. Section 19 gives the Secretary of State a power by order to amend ss 4, 5 or 6 to take account of Northern Ireland legislation. Section 20 gives effect to Sch 2, which replaces references to the Third Parties (Rights against Insurers) Act 1930 in other legislation with references to the 2010 Act, Sch 3, which sets out transitional provisions, and Sch 4, which makes various repeals and revocations. Section 21 deals with the short title, commencement and extent.

Amendments, repeals and revocations

Subscribers should note that the list below mentions repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. This information may also be found in the COMMENCEMENT OF STATUTES table in the Current Service Noter up booklet. Please also note that these lists are not exhaustive.

Specific provisions of a number of Acts are amended or repealed. These include: Third Parties (Rights Against Insurers) Act 1930; Insolvency Act 1985 Sch 8 para 7; Insolvency Act 1986 Sch 14; Road Traffic Act 1988 s 153.

Halsbury's Laws of England/STOP PRESS/TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

TRIBUNALS, COURTS AND ENFORCEMENT ACT 2007

The Tribunals, Courts and Enforcement Act 2007 makes provision about tribunals and inquiries, establishes an Administrative Justice and Tribunals Council, amends the law relating to judicial appointments and appointments to the Law Commission, amends the law relating to the

enforcement of judgments and debts, makes further provision about the management and relief of debt, makes provision protecting cultural objects from seizure or forfeiture in certain circumstances, amends the law relating to the taking of possession of land affected by compulsory purchase and alters the powers of the High Court in judicial review applications. The Act received the royal assent on 19 July 2007 and the following provisions came into force on that date: ss 53, 55-57, 145, 147-149, Sch 11. The following provisions came into force on 19 September 2007: ss 1, 2, 7 (in part), 9, 10 (in part), 11 (in part), 13 (in part), 18 (in part), 20 (in part), 21 (in part), 22, 27 (in part), 30-42, 45 (in part), 46, 48 (in part), 49, 50 (in part), 54, 58-61, 144 (in part), Schs 1 (in part), 4-9 (in part); 1 November 2007: ss 44, 45 (in part), 48 (in part), 146, Schs 7 (in part), 8 (in part), 23 (in part); 1 December 2007: s 48 (in part), Sch 8 (in part); 1 April 2008: ss 139, 140, Sch 22; 1 June 2008: s 48 (in part), Schs 7 (in part), 8 (in part) (SI 2007/2709). The 2007 Act ss 134-138 came into force on 31 December 2007: SI 2007/3613. The remaining provisions come into force on a day or days to be appointed.

Part 1 (ss 1-49) Tribunals and Inquiries

Section 1 extends the definition of 'the judiciary' to the holders of specified offices. Section 2, Sch 1 provide that Her Majesty may, on the recommendation of the Lord Chancellor, appoint a person to the office of Senior President of Tribunals. The First-tier Tribunal and the Upper Tribunal are established by s 3. Section 4, Sch 2 set out provisions relating to judges and other members of the First-tier Tribunal. Section 5, Sch 3 specify who is eligible to be a judge of the Upper Tribunal. Provision is made as to who may be a judge of the First-tier Tribunal, as well as the Upper Tribunal: s 6. The Lord Chancellor may, with the concurrence of the Senior President of Tribunals, by order make provision for the organisation of the First-tier Tribunal and the Upper Tribunal into a number of chambers: s 7, Sch 4. Section 8 gives the Senior President of Tribunals the power to delegate his functions. Sections 9, 10 provide for the review of decisions of the First-tier Tribunal and the Upper Tribunal. Section 11 provides that any person treated by the Lord Chancellor as a party to a case has a right to appeal to the Upper Tribunal. The Upper Tribunal may, but need not, set aside the decision of the First-tier Tribunal, and if it does, must either remit the case to the First-tier Tribunal with directions for its reconsideration, or re-make the decision: s 12. Section 13 provides the basis on which appeals can be made to the Court of Appeal. The appellate court may, but need not, set aside the decision of the Upper Tribunal, and if it does, must either remit the case to the Upper Tribunal or, where the decision of the Upper Tribunal was on an appeal or reference from another tribunal or some other person, to the Upper Tribunal or that other tribunal or person, with directions for its reconsideration, or re-make the decision: s 14. Section 15 grants the Upper Tribunal 'judicial review' jurisdiction in so much as it provides the Upper Tribunal with the power to grant a mandatory order, a prohibiting order, a quashing order, a declaration and an injunction. Such an application for relief may be made only if permission to make it has been obtained from the tribunal: s 16. If the Upper Tribunal makes a quashing order in respect of a decision, it may in addition remit the matter concerned to the court, tribunal or authority that made the decision, with a direction to reconsider the matter and reach a decision in accordance with the findings of the Upper Tribunal, or substitute its own decision for the decision in question: s 17. Section 18 sets out the conditions that need to be met for the Upper Tribunal to have power to deal with an application for relief or an application for permission to apply for relief. The procedure for the transfer of judicial review applications from the High Court to the Upper Tribunal is provided by s 19. Sections 20, 21 deal with the transfer of judicial review applications from the Court of Session. Section 22, Sch 5 provide for there to be rules, to be called 'Tribunal Procedure Rules', governing the practice and procedure to be followed in the First-tier Tribunal and the practice and procedure to be followed in the Upper Tribunal. The Senior President of Tribunals may give directions as to the practice and procedure of the First-tier Tribunal, and as to the practice and procedure of the Upper Tribunal: s 23. A person exercising power to make Tribunal Procedure Rules or give practice directions must, when making provision in relation to mediation, have regard to the principle that mediation of matters in dispute between parties to proceedings is

to take place only by agreement between those parties and that where parties to proceedings fail to mediate, or where mediation between parties to proceedings fails to resolve disputed matters, the failure is not to affect the outcome of the proceedings: s 24. In relation to the attendance and examination of witnesses, the production and inspection of documents and all other matters incidental to the Upper Tribunal's functions, the Upper Tribunal has the same powers, rights, privileges and authority as the High Court: s 25. Each of the First-tier Tribunal and the Upper Tribunal may decide a case in England and Wales, in Scotland, or in Northern Ireland, even though the case arises under the law of a territory other than the one in which the case is decided: s 26. A sum payable in pursuance of a decision of the First-tier Tribunal or Upper Tribunal is recoverable as if it were payable under an order of a county court or the High Court: s 27. If it appears to the First-tier Tribunal or the Upper Tribunal that a matter before it requires special expertise not otherwise available to it, it may direct that in dealing with that matter it must have relevant knowledge or experience: s 28. The costs of all proceedings in the First-tier Tribunal and the Upper Tribunal are to be in the discretion of the tribunal in which the proceedings take place: s 29. Section 30 gives the Lord Chancellor the power to transfer a function of a scheduled tribunal to be transferred to the First-tier Tribunal or the Upper Tribunal or to the First-tier Tribunal and the Upper Tribunal. The Lord Chancellor may, by order, make provision for abolishing the tribunal by whom such a transferred function is exercisable immediately before its transfer: s 31. Sections 32-34 provide the power to appeal to the Upper Tribunal from tribunals in Wales, Scotland and Northern Ireland. Under s 35, it is possible to transfer to the Lord Chancellor administrative functions of other ministers in relation to certain tribunals. Section 36 provides for the transfer of powers to make procedural rules for certain tribunals. Under s 37, the Lord Chancellor may amend the lists of tribunals in Sch 6. Provision in an order under any of ss 30-36 may take the form of amendments, repeals or revocations of enactments: s 38. The Lord Chancellor is under a duty to ensure that there is an efficient and effective system to support the carrying on of the business of the First-tier Tribunal, the Upper Tribunal, employment tribunals, the Employment Appeal Tribunal and the Asylum and Immigration Tribunal, and that appropriate services are provided for those tribunals: s 39. Under s 40, the Lord Chancellor may appoint such staff as appear to him appropriate for the purpose of discharging his general duty in relation to the tribunals. Under s 41, the Lord Chancellor may provide, equip, maintain and manage such tribunal buildings, offices and other accommodation as appear to him appropriate for the purpose of discharging his general duty in relation to the tribunals. Section 42 gives the Lord Chancellor the power to prescribe fees. Each year the Senior President of Tribunals must give the Lord Chancellor a report covering, in relation to relevant tribunal cases, matters that the Senior President of Tribunals wishes to bring to the attention of the Lord Chancellor and matters that the Lord Chancellor has asked the Senior President of Tribunals to cover in the report: s 43. Section 44, Sch 7 establish the Administrative Justice and Tribunals Council and make provision about membership, committees and functions of the Council. The Council on Tribunals and the Scottish Committee of the Council on Tribunals are abolished: s 45. Under s 46, the Lord Chief Justice may delegate certain functions. Section 47 provides that persons with responsibilities in connection with a courts-related activity and persons with responsibilities in connection with the corresponding tribunals activity, must co-operate with each other in relation to the carrying-on of those activities. Section 48, Schs 8, 9 make consequential amendments and transitional provisions. Section 49 sets out the procedure to be followed in respect of the various types of order which can be made under Part 1.

Part 2 (ss 50-61) Judicial appointments

Section 50, Sch 10 set out the eligibility conditions for judicial appointment. In addition, the Lord Chancellor may by order specify a relevant qualification: s 51. Section 52 defines the meaning of 'gain experience in law' for the purposes of s 50. Section 53 makes provision for the appointment to fee-paid judicial offices of those who have previously held corresponding salaried appointments. Section 54 provides for the continuation of judicial office after the

normal retirement date. Under s 55, the Lord Chancellor is given responsibility for the appointment of deputy circuit judges. Section 56, Sch 11 make provision for the appointment of deputy district judges. Section 57 amends the provisions in the Supreme Court Act 1981 (now Senior Courts Act 1981) for appointing deputies and temporary officers to certain posts, including masters and registrars of the Supreme Court. The 2007 Act s 58 provides for the appointment of temporary assistant to Judge Advocate General. Section 59 removes references to the offices of member and Chairman of the Special Immigration Appeals Commission, the Proscribed Organisations Appeal Commission and the Pathogens Access Appeal Commission. Under s 60, the Lord Chancellor may select the Chairman of the Law Commission from serving members of the senior judiciary only. Section 61 relates to the Northern Ireland Judicial Appointments Commission.

Part 3 (ss 62-90) Enforcement by taking control of goods

Section 62, Schs 12, 13 apply where an enactment, writ or warrant confers the power to take control of goods and sell them to recover a sum of money. Section 63 sets out who may act as an enforcement agent. A certificate to act as an enforcement agent may be issued by a judge assigned to a county court district and, in prescribed circumstances, by a district judge: s 64. Sections 62-70 replace the common law rules about the exercise of the powers which under ss 62-70 become powers to use the procedure for taking control of goods: s 65. However, any pre-commencement enforcement is not affected: s 66. County court enforcement is transferred to any person authorised by or on behalf of the Lord Chancellor: s 67. Sections 68, 69 provide for magistrates' courts warrants of control and county court warrants of control. If at any time the High Court is satisfied that a party to proceedings is unable to pay a sum recovered against him or any instalment of such a sum, the court may stay the execution of any writ of control issued in the proceedings, for whatever period and on whatever terms it thinks fit: s 70. Section 71 abolishes the common law right to distrain for arrears of rent. Under s 72, a landlord under a lease of commercial premises may use the procedure for taking control of goods to recover from the tenant rent payable under the lease. Section 73 defines 'landlord', in relation to a lease, as the person for the time being entitled to the immediate reversion in the property comprised in the lease. 'Lease' means a tenancy in law or in equity, including a tenancy at will, but not including a tenancy at sufferance: s 74. Section 75 defines what is meant by 'a lease of commercial premises'. 'Rent' means the amount payable under a lease for possession and use of the demised premises, together with any interest payable on that amount under the lease and any value added tax chargeable on that amount or interest: s 76. Section 77 sets out the conditions which must be met before commercial rent arrears recovery is exercisable. Section 78 provides for the intervention of the court on the application of the tenant. When the lease ends, commercial rent arrears recovery ceases to be exercisable, with certain exceptions: s 79. Section 80 deals with the exercise of commercial rent arrears recovery where the premises concerned are an agricultural holding. Where commercial rent arrears recovery is exercisable by a landlord to recover rent due and payable from the immediate tenant, the landlord may serve a notice on any sub-tenant requiring that sub-tenant to pay his rent directly to the landlord: s 81. Section 82 provides that, for any amount that a sub-tenant pays under such a notice, he may deduct an equal amount from the rent that would be due to his immediate landlord under the sub-lease. A notice under s 81 is replaced if the landlord serves another notice on the same sub-tenant for a notified amount covering the same rent or part of that rent: s 83. Under s 84, for the purposes of the recovery of sums payable by a sub-tenant under s 81, the sub-tenant is treated as the immediate tenant of the landlord, and the sums are to be treated as rent accordingly. Contracts for rights similar to commercial rent arrears recovery are to be void: s 85. Section 86, Sch 14 make minor and consequential amendments. Section 87 deals with interpretation for ss 71-87. Crown preference for the purposes of execution against goods is abolished: s 88. Section 89 provides that Part 3 binds the Crown. Section 90 deals with the procedure for making regulations.

Part 4 (ss 91-105) Enforcement of judgments and orders

Section 91, Sch 15 make amendments to the Attachment of Earnings Act 1971 about the basis on which periodical deductions are to be made under an attachment of earnings order. By virtue of the 2007 Act s 92, Her Majesty's Revenue and Customs information may be provided to the courts for the purpose of re-directing a lapsed attachment of earnings order. Section 93 provides for making and enforcing charging orders in cases where the debtor is not in default under an instalments order made in relation to the sum to be secured by the charging order. Section 94 provides the power to set financial thresholds below which a court cannot make a charging order. A person who is the creditor in relation to a judgment debt may apply to the High Court or a county court for information about what kind of action it would be appropriate to take in court to recover that particular debt: s 95. If the creditor in relation to a judgment debt makes such an application for information, the relevant court may make a departmental information request or an information order in relation to the debtor: s 96. Section 97 provides that a departmental information request is a request for the disclosure of information held by, or on behalf of, a government department. An information order is an order of the relevant court which specifies a prescribed person, specifies prescribed information relating to the debtor and orders the information discloser to disclose the required information to the relevant court: s 98. Under s 99, if the relevant court makes a departmental information request, the recipient of the request may disclose to the relevant court any information that the recipient considers is necessary to comply with the request. An information discloser is not to be regarded as having breached an information order because of a failure to disclose some or all of the required information, if that failure is for one of the permitted reasons: s 100. By s 101, if the creditor in relation to a judgment debt makes an application for information under s 95 and information is disclosed to the relevant court in compliance with a request or order made under s 96, the relevant court may use the debtor information for the purpose of making another request or order under s 96 in relation to the debtor. A person to whom the debtor information is disclosed commits an offence if he uses or discloses the debtor information and the use or disclosure was unauthorised: s 102. Section 103 provides that it is for the Lord Chancellor to make information regulations. Section 104 deals with interpretation for ss 95-103. Section 105 provides for application and transitional provision.

Part 5 (ss 106-133) Debt management and relief

Section 106, Sch 16 replace the existing County Courts Act 1984 Pt 6 (ss 112-112A) relating to administration orders. The 2007 Act s 107 adds the 1984 Act Pt 6A (ss 117A-117X) on enforcement restriction orders. The 2007 Act s 108, Sch 17 insert the Insolvency Act 1986 Pt VIIA (ss 251A-251X) on debt relief orders, the 2007 Act Sch 18 sets out the conditions for making a debt relief order, Sch 19 sets out debt relief restrictions, orders and undertakings and Sch 20 sets out consequential amendments with regard to debt relief orders. Section 109 sets out the conditions that a scheme must meet in order to be considered a debt management scheme. Section 110 sets out the conditions that a plan must meet to be considered a debt repayment plan. The supervising authority may approve one or more debt management schemes, and regulations may specify a procedure for making an application for approval of a debt management scheme: ss 111, 112. Section 113 sets out the relevant terms to which the approval of a debt management scheme is subject. Regulations under ss 111, 113 are set out in Sch 21. If a debt repayment plan is arranged for a non-business debtor in accordance with an approved scheme and the plan comes into effect, the debtor is discharged from the debts that are specified in the plan: s 114. During the currency of a debt repayment plan arranged in accordance with an approved scheme, no qualifying creditor of the debtor is to present a bankruptcy petition against the debtor in respect of a qualifying debt, unless regulations provide otherwise or the creditor has the permission of a county court: s 115. In relation to a non-business debtor during a period of protection, no qualifying creditor of the debtor is to

pursue any remedy for the recovery of a qualifying debt, unless regulations provide otherwise or the creditor has the permission of a county court: s 116. Section 117 provides that, in relation to a non-business debtor during a period of protection, no qualifying creditor is to charge any sum by way of interest, fee or other charge in respect of a qualifying debt, unless regulations provide otherwise or the creditor has the permission of a county court. In relation to a non-business debtor during a period of protection, a domestic utility creditor is any person who provides the debtor with a supply of mains gas or mains electricity for the debtor's own domestic purposes and is a creditor under a qualifying debt that relates to the provision of that supply: s 118. Section 119 sets out what conditions must be met if the county court is to stay the proceedings. Regulations may make provision about the registration of any request made to the operator of an approved scheme for a debt repayment plan to be arranged in accordance with the scheme or any debt repayment plan arranged for a non-business debtor in accordance with an approved scheme: s 120. Section 121 provides that if a debt repayment plan is arranged for a debtor in accordance with an approved scheme and immediately before the plan is arranged other debt management arrangements are in force in respect of the debtor, the plan is not to come into effect unless the other debt management arrangements cease to be in force. If a debt repayment plan is arranged for a debtor in accordance with an approved scheme, an affected creditor may appeal to a county court against the fact that the plan has been arranged, the fact that a debt owed to the affected creditor has been specified in the plan, or the terms of the plan: s 122. Section 123 provides that if such an appeal is made to a county court, the county court may determine the appeal in any way that it thinks fit. The operator of an approved scheme may recover its costs by charging debtors or affected creditors: s 124. Under s 125, regulations may specify a procedure for terminating the approval of a debt management scheme. The approval of a debt management scheme may be terminated only if the termination is in accordance with specified terms: s 126. Section 127 specifies that provision may be made to allow the supervising authority to deal with a termination case other than by terminating the approval. Under s 128, provision may be made about the effects if the approval of a debt management scheme comes to an end. Section 129 specifies that the supervising authority is the Lord Chancellor or any person that the Lord Chancellor has authorised to approve debt management schemes. In accordance with s 130, it is for the Lord Chancellor to make regulations. Main definitions are set out in s 131. All debts are qualifying debts except any debt secured against an asset or, in relation to a debt repayment plan which has been requested or arranged, any debt which could not, by virtue of the terms of the debt management scheme, be specified in the plan: s 132. Section 133 defines a 'period of protection'.

Part 6 (ss 134-138) Protection of cultural objects on loan

Section 134 sets out the conditions an object must fulfil if it is to be considered to be protected. While an object is protected it may not be seized or forfeited under any enactment or rule of law, unless it is seized or forfeited under or by virtue of an order made by a court in the United Kingdom, and the court is required to make the order under, or under provision giving effect to, a Community obligation or any international treaty: s 135. Section 136 provides a definition of 'museum or gallery'. Section 137 deals with interpretation for Part 6. Part 6 binds the Crown: s 138.

Part 7 (ss 139-143) Miscellaneous

Section 139 enables writs of possession issued to enforce compulsory purchase orders to be executed by High Court enforcement officers and Sch 22 sets out consequential amendments with regard to compulsory purchase. Section 140 amends the Courts Act 2003 Sch 7 in order to provide for the issue of certain warrants to enforcement officers. The 2007 Act s 141 extends the power of the High Court in respect of quashing orders. Section 142 deals with the recovery

of sums payable under compromises involving ACAS and s 143 deals with appeals in relation to design rights.

Part 8 (ss 144-149) General

Section 144 specifies protected functions of the Lord Chancellor. Under s 145, the Lord Chancellor has the power to make supplementary or other provision. Section 146, Sch 23 contain repeals. Sections 147-149 deal with extent, commencement and short title.

Amendments, repeals and revocations

Subscribers should note that the list below mentions repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. This information may also be found in the COMMENCEMENT OF STATUTES table in the *Current Service* Noter-up booklet. Please also note that this list is not exhaustive.

Specific provisions of a number of Acts are amended, added or repealed. These include: Lands Clauses Consolidation Act 1845 ss 3, 91; Registered Designs Act 1949 ss 27A, 28; Courts-Martial (Appeals) Act 1951 s 30(2); Law Commissions Act 1965 s 1; Compulsory Purchase Act 1965 s 13; Courts Act 1971 s 24; Attachment of Earnings Act 1971 ss 15A-15D; Charging Orders Act 1979 s 3A; Magistrates' Courts Act 1980 s 125ZA; Supreme Court Act 1981 ss 31, 31A, 91 (now Senior Courts Act 1981 ss 31, 31A, 91); County Courts Act 1984 ss 99, 112A-112AI, 117A-117X; Insolvency Act 1986 Pt 7A; Copyright, Designs and Patents Act 1988 s 249; Judicial Pensions and Retirement Act 1993 s 26; Employment Tribunals Act 1996 s 19A; Courts Act 2003 Sch 7; Constitutional Reform Act 2005 s 3, 94A, 94B, Sch 7.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/STOP PRESS: REGULATORY ENFORCEMENT AND SANCTIONS ACT 2008

ADMINISTRATIVE LAW (

STOP PRESS:

The Regulatory Enforcement and Sanctions Act 2008 makes provision for the establishment of the Local Better Regulation Office, for the co-ordination of regulatory enforcement by local authorities, for the creation of civil sanctions in relation to regulatory offences and for the reduction and removal of regulatory burdens. The Act received the royal assent on 21 July 2008 and the following provisions came into force on that date: ss 74-77. The following provisions came into force on 1 October 2008: ss 1-21, 24 (in part), 28 (in part), 34, 36-55, 59-73, Schs 1-3, 4 (in part), 5-7 (SI 2008/2371). The remaining provisions come into force on a day or days to be appointed.

Part 1 (ss 1-21) The Local Better Regulation Office

Section 1, Sch 1 establish the Local Better Regulation Office ('LRBO') as a body corporate. Section 2, Sch 2 dissolve the old Local Better Regulation Office company. Section 3 defines

'local authority' and s 4, Sch 3 define 'relevant function'. The Local Better Regulation Office has the objective of securing that local authorities exercise their relevant functions effectively and in a way which does not give rise to unnecessary burdens: s 5. The LRBO has the function of giving guidance to local authorities as to how to exercise their relevant functions: s 6. Under s 7, the LRBO may direct a local authority to comply with such guidance. The LRBO may provide financial support and assistance to local authorities: s 8. The LRBO may give advice or make proposals to a minister of the Crown on the way a local authority exercises any of its functions: s 9. By s 10, the LRBO may give advice or make proposals to the Welsh Ministers. The LRBO must prepare and publish a list specifying those matters to which a local authority in England or Wales should give priority when allocating resources to its relevant functions: s 11. Under s 12, the LRBO and either the Environment Agency, the Food Standards Agency, the Gambling Commission or the Health and Safety Executive must enter into a memorandum of understanding with each other as to how they will work together in the exercise of their functions. Section 13 provides that the LRBO must secure that in exercising any of its functions it does not impose burdens which are unnecessary or maintain burdens which have become unnecessary. The LRBO may do anything which it thinks necessary or expedient for the purpose of, or in connection with, the exercise of its functions: s 14. Under s 15, the Secretary of State may give the LRBO guidance or directions as to the exercise of any of its functions. The Welsh Ministers may give the LRBO guidance or directions as to the exercise in relation to Wales of any of its functions relating to a Welsh ministerial matter: s 16. Section 17 provides that the Secretary of State must review the LRBO's discharge of its functions. The Secretary of State may by order provide for the LRBO to be dissolved: s 18. Where an order under s 18 makes provision for the transfer to another person of the property, rights and liabilities of the LRBO, the Treasury may by regulations make provision for varying the way in which a relevant tax has effect in relation to the property, rights or liabilities transferred, or anything done for the purposes of, or in relation to, the transfer: s 19. Section 20 provides that an order or regulations under Pt 1 must be made by statutory instrument. Section 21 provides for the interpretation of Pt 1.

Part 2 (ss 22-35) Co-ordination of regulatory enforcement

Section 22 specifies that Pt 2 applies when a person carries on an activity in the area of two or more local authorities and each of those authorities has the same relevant function in relation to that activity. Section 23 defines 'local authority' for the purposes of Pt 2. Section 24 gives the meaning of 'relevant function' for the purposes of Pt 2. For the purposes of Pt 2, the LRBO may nominate a local authority to be the 'primary authority' for the exercise of the relevant function in relation to the regulated person: s 25. The LRBO may only so nominate a local authority in relation to the regulated person if the authority and the regulated person have agreed in writing to the nomination, or the regulated person has requested the LRBO to make such a nomination for the exercise of the relevant function in relation to the regulated person and the LRBO considers the authority suitable for nomination: s 26. Under s 27, the primary authority has the function of giving advice and guidance. A local authority other than the primary authority must notify the primary authority before taking any enforcement action against the regulated person pursuant to the relevant function: s 28, Sch 4. Section 29 provides for certain exclusions from s 28. Where a relevant function consists of or includes a function of inspection, the primary authority may make an inspection plan: s 30. By s 31, the primary authority may charge the regulated person such fees as it considers to represent the costs reasonably incurred by it in the exercise of its functions under Pt 2 in relation to the regulated person. The LRBO may do anything it considers appropriate for the purpose of supporting the primary authority in the exercise of the authority's functions under Pt 2: s 32. The LRBO may give guidance to any one or more local authorities about the operation of Pt 2: s 33. An order made under Pt 2 is to be made by statutory instrument: s 34. Section 35 provides interpretation for Pt 2.

Part 3 (ss 36-71) Civil sanctions

Section 36 gives the power to make orders providing for civil sanctions. Section 37, Schs 5, 6 define 'regulator', and s 38 defines 'relevant offence'. Section 39 allows for provision to confer on a regulator the power by notice to impose fixed monetary penalties. Section 40 specifies the procedure for making fixed monetary penalties. In a case where a notice of intent is served on a person, no criminal proceedings for the relevant offence may be instituted against the person in respect of the act or omission to which the notice relates before the end of the period in which the person may discharge liability to the fixed monetary penalty and if the person so discharges liability, the person may not at any time be convicted of the relevant offence in relation to that act or omission: s 41. Section 42 provides the power to confer on a regulator the power by notice to impose one or more discretionary requirements on a person in relation to a relevant offence. The procedure for discretionary requirements is set out at s 43. Section 44 provides that where a person has been required to pay a variable monetary penalty, the order made by the minister must provide that the person may not be later prosecuted for the same incident of regulatory non-compliance. The order may also allow a regulator to issue a monetary penalty for the failure to comply with the discretionary requirement: s 45. Provision may be made under s 46 for conferring on a regulator the power to serve a stop notice on a person. Section 47 specifies the procedure for giving a stop notice. Provision under s 46 conferring power on a regulator to serve a stop notice on a person must include provision for the regulator to compensate the person for loss suffered as the result of the service of the notice: s 48. Such provision under s 46 must provide that, where a person on whom a notice is served does not comply with it, the person is guilty of an offence and liable on summary conviction, to a fine not exceeding £20,000, or imprisonment for term not exceeding 12 months, or both, or, on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both: s 49. Section 50 concerns enforcement undertakings. Section 51 provides that a regulator cannot be granted power to impose both a fixed monetary penalty and a discretionary requirement or both a fixed monetary penalty and a stop notice in relation to the same offence. An order for a fixed monetary penalty may include provision for early payment discounts, for the payment of interest or other financial penalties for late payment of the penalty, such interest or other financial penalties not in total to exceed the amount of that penalty or for enforcement of the penalty: s 52. Provision under s 42 may include provision for a regulator, by notice, to require a person on whom a discretionary requirement is imposed to pay the costs incurred by the regulator in relation to the imposition of the discretionary requirement up to the time of its imposition: s 53. An order may not provide for the making of an appeal other than to the First-tier Tribunal, or another tribunal created under an enactment: s 54. An order may include consequential, supplementary, incidental or transitional provision: s 55. Section 56 concerns Scotland and s 57 concerns Northern Ireland. Section 58 concerns consultation and consent with regard to Scotland and s 59 concerns consultation and consent with regard to Wales. Before making an order under Pt 3 the relevant authority must consult the regulator to which the order relates, such organisations as appear to the relevant authority to be representative of persons substantially affected by the proposals and such other persons as the relevant authority considers appropriate: s 60. A statutory instrument containing an order under Pt 3 may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament: s 61. Section 62, Sch 7 concerns offences under subordinate legislation. Section 63 gives guidance as to the use of civil sanctions. Guidance as to the enforcement of relevant offences is provided by s 64. Publication of enforcement action is required by s 65. Section 66 provides for compliance with regulatory principles. Section 67 provides that the relevant authority must review the operation of any provision conferring power on a regulator to impose a civil sanction in relation to an offence. Section 68 enables the minister making the order conferring the sanctioning powers on a regulator to be able to direct the regulator not to issue any further notices imposing one of the new sanctions or to accept enforcement undertakings. Section 69 enables the payment of

penalties into the Consolidated Fund. Section 70 provides for disclosure of information to a regulator. Section 71 provides interpretation for Pt 3.

Part 4 (ss 72, 73) Regulatory burdens

Section 72 imposes a duty not to impose or maintain unnecessary burdens and s 73 specifies the functions to which s 72 applies.

Part 5 (ss 74-77) General

Section 74 provides general interpretation for the Act, s 75 deals with extent, s 76 with commencement, and s 77 with short title.

Amendments, repeals and revocations

Subscribers should note that the list below mentions repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. This information may also be found in the COMMENCEMENT OF STATUTES table in the *Current Service* Noter-up booklet. Please also note that this list is not exhaustive.

Specific provisions of a number of Acts are amended, added or repealed. These include: Public Records Act 1958 Sch 1; Parliamentary Commissioner Act 1967 Sch 2; House of Commons Disqualification Act 1975 Sch 1; Freedom of Information Act 2000 Sch 1.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/WELFARE REFORM ACT 2009

WELFARE REFORM ACT 2009

The Welfare Reform Act 2009 amends the law relating to social security, enables disabled people to be given greater control over the way in which certain public services are provided for them, amends the law relating to child support, and makes provision regarding the registration of births. The Act received the royal assent on 12 November 2009 and the following provisions came into force on that day: ss 11, 2, 8, 11, 23, 27, 29, 37, 57, 59-62, Sch 3. Sections 15, 24 (for certain purposes), 34, 38-50, 58(2), (3), Sch 4 (for certain purposes) and Sch 7 Pt 2 (in part) came into force on 12 January 2010: s 61; SI 2010/45. The following provisions came into force on 14 January 2010: s 55(1) (for certain purposes), s 55(3) (SI 2010/45). The following provisions came into force on 10 February 2010: ss 10, 33 (for certain purposes) and 35 (SI 2010/293). The following provisions came into force on 22 March 2010: s 26 and Sch 7 Pt 3 (in part) (SI 2010/293). The following provisions came into force on 1 April 2010: s 24 (so far as not already in force), Sch 4 (so far as not already in force), Sch 7 Pt 3 (SI 2010/45; SI 2010/293). The following provisions came into force on 6 April 2010: s 33 (SI 2010/293). The following provisions came into force on 11 April 2010: s 14 (for certain purposes) (SI 2010/293). The following provisions come into force on 15 October 2010: s 14 (for certain purposes) (SI 2010/293). The following provisions come into force on 11 April 2011: s 14 (for remaining purposes) (SI 2010/293). The remaining provisions come into force on a day or days to be appointed. For details of commencement, see the COMMENCEMENT OF STATUTES table in the *Current Service* Noter-up booklet.

Part 1 (ss 1-37) Social security

Section 1 enables the Secretary of State to impose a requirement on claimants of jobseeker's allowance to participate in schemes designed to assist them to obtain employment, and in particular to require claimants to undertake work as part of a 'work for your benefit' scheme. Under s 2, the Secretary of State may require lone parents in receipt of income support to undertake work-related activity in certain circumstances as a condition of continuing to receive the full amount of benefit. Section 2 also requires the Secretary of State to provide persons in receipt of specified benefits who are required to attend work-focused interviews with an action plan. Section 3 makes provision exempting specified categories of lone parents from the requirement to attend work-focused interviews and undertake work-related activity. Section 4, Sch 1 deal with the entitlement of certain claimants to jobseeker's allowance without seeking employment, and s 5 removes entitlement to income support and income-related employment and support allowance for couples where one member is capable of work. Section 6 enables the Secretary of State to permit persons in receipt of statutory sick pay to claim income-related employment and support allowance instead of income support. Section 7 makes transitional provision and s 8 deals with the Parliamentary procedure for regulations imposing work-related activity requirements on lone parents of children under seven. Provision is made for income support to be abolished when there are no longer any groups of people that require it: s 9, Sch 2. By virtue of s 10, the Secretary of State may specify a work-related activity which a claimant of employment and support allowance in the work-related activity group must undertake as a condition of continuing to be entitled to the full amount of his allowance. Section 11, Sch 3 provide for claimants of jobseeker's allowance and employment support allowance who are dependent on drugs, and ss 12, 13 amend the contribution conditions for jobseeker's allowance and contributory employment and support allowance. The entitlement conditions for the higher rate mobility component of disability living allowance are amended by s 14 so as to entitle persons with a prescribed severe visual impairment, and s 15 abolishes the payment of adult dependency increases for all new claims for maternity allowance and carer's allowance. Under s 16, the Secretary of State may make arrangements with external providers to make loans to individuals who are receiving prescribed benefits or have prescribed needs ('external provider social loans'), and under s 17 he has power to restrict the availability of social fund loans in areas where external provider social loans are available. Section 18 deals with the supply of information in connection with external provider social loans. Sections 19, 20 provide that where goods and services covered by a community care grant are provided under arrangements that the Secretary of State has made with a supplier, he may require the grant to relate to specified goods or services and the payment of the grant to be made to that supplier. Section 21 provides for Parliamentary control of regulations relating to unauthorised disclosure of information in relation to external provider social loans or community care grants. By virtue of s 22, the Secretary of State may extend the range of situations in which payments of benefits on account can be made, and s 23 enables him to up-rate benefits for the tax year 2009-2010 even if the general level of prices has not increased. Section 24, Sch 4 extend the provisions relating to the loss of benefit where a claimant is convicted of benefit fraud, and s 25 introduces new benefit sanctions against claimants of jobseeker's allowance who are convicted of violent conduct in connection with their claim. A pilot scheme under which benefit sanctions have been applied to certain offenders who are in breach of specified community orders is brought to an end by s 26, and provision is made by s 27 for new pilot schemes for the calculation and payment of state pension credit to increase the number of eligible persons receiving the benefit. Section 28 extends the time limits for certain pilot schemes relating to working-age benefits, and s 29 provides for the exemption of victims of domestic violence from the jobseeking conditions of jobseeker's allowance for a prescribed period. Section 30 provides that where regulation-making powers in specified provisions enable circumstances to be prescribed that constitute good cause for failing to undertake mandatory activities, the regulations must always include the availability of childcare and the claimant's physical or mental health in the list of circumstances that must be taken into account. The well-being of

children must be taken into account when agreeing the activities that a parent will undertake as part of a jobseeker's agreement or action plan for recipients of employment and support allowance: s 31. By virtue of s 32, specified functions of the Secretary of State under the Jobseeker's Act 1995 may be contracted out. Section 33 provides for the continuation of entitlement to jobseeker's allowance where a claimant fails to attend a mandatory interview without showing good cause for the failure to attend, subject to a delay in payment for a fixed period. Section 34 expands the scope of the sharing of social security and employment training information, and s 35 makes provision regarding the age at which persons will be required to attend work-focused interviews to reflect the equalisation of the state pension age for men and women. Section 36 requires the renaming of council tax benefit as council tax rebate, and s 37 makes minor legislative amendments.

Part 2 (ss 38-50) Disabled people: right to control provision of services

Section 38 states the purpose of the 2009 Act Pt 2 as being to enable disabled people to have a greater choice and control over the way in which relevant services are provided for them by defined public authorities. 'Relevant services' are defined in s 39 and public authorities are defined in s 40. Section 41 provides a general power for an appropriate authority to make regulations for the purpose of Pt 2, while s 45 defines 'appropriate authority' for these purposes, s 46 makes supplementary provision, and s 47 requires consultation on any proposed regulations. Section 42 sets out the provisions that may be included in regulations dealing with direct payments to disabled people. Section 43 provides for the making of regulations for the exercise of the rights to control the provision of services on behalf of persons who lack capacity within the meaning of the Mental Capacity Act 2005. Section 44 deals with the establishment of pilot schemes, and s 48 empowers the Secretary of State to repeal the exclusion of community care services from the definition of relevant services. Section 49 deals with the control of regulations and orders by Parliament, and s 50 deals with interpretation.

Part 3 (ss 51-55) Child maintenance

Section 51, Sch 5 permit the Child Maintenance and Enforcement Commission ('the Commission') to order the disqualification of a person who has arrears of child maintenance from holding a driving licence or travel authorisation without applying to the court, and makes provision for appeals to the court against such disqualification orders. Sections 52, 53 provide for the Commission to pilot the powers of disqualification for two years and require the Secretary of State to report to Parliament on the operation of the pilot schemes. By virtue of s 54, the Commission may specify the intervals at which child support maintenance payments are made, having regard to the preferences indicated by the parent who does not reside with the children concerned. Section 55 extends the scope of offences relating to the provision of information.

Part 4 (s 56) Birth registration

Section 56, Sch 6 make provision for the joint registration of births where the parents of a child are neither married to each other nor civil partners of each other so as to increase the ways in which an unmarried father may register jointly with the child's mother, and confer additional rights and duties on both unmarried parents to enable unmarried fathers' details to be entered on the birth register in as many cases as possible.

Part 5 (ss 57-62) General

Section 57 empowers the Secretary of State to make consequential amendments and revocations of subordinate legislation, and repeals and revocations are made by s 58, Sch 7. Sections 59-62 deal with financial provisions, extent, commencement and short title.

Amendments, repeals and revocations

The list below, which is not exhaustive, mentions amendments which are or will be effective when the Act is fully in force.

Specific provisions of a number of Acts are substituted, added or repealed. These include: Births and Deaths Registration Act 1953 ss 1, 2, 2A-2E, 6, 10, 10A-10C, 39A; Child Support Act 1991 ss 39B, 39CA, 39CB, 39DA, 39F, 39G, 40B; Social Security Administration Act 1992 ss 2B, 2D-2H, 78A, 108, 122G, 122H; Social Security Contributions and Benefits Act 1992 ss 124, 126, 127, 140ZA-140ZC; Jobseeker's Act 1995 ss 1A, 1B, 11A-11C, 15B, 17A-17C, 18A-18D, 19, 20, 20A-20E, Sch A1; Welfare Reform and Pensions Act 1999 s 60; Child Support, Pensions and Social Security Act 2000 ss 62-66; Social Security Fraud Act 2001 ss 6A-6C; State Pension Credit Act 2002 s 18A; Welfare Reform Act 2007 s 15A, Sch 1A; Child Maintenance and Other Payments Act 2008 s 30.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/1. INTRODUCTION/(1) SCOPE AND NATURE OF THE SUBJECT/1. Scope.

1. INTRODUCTION

(1) SCOPE AND NATURE OF THE SUBJECT

1. Scope.

For the purposes of this work, administrative law¹ is understood to mean the law relating to the discharge of functions of a public nature in government and administration. It includes the law relating to functions of public authorities and officers and of tribunals, judicial review of the exercise of those functions, the civil liability and legal protection of those purporting to exercise them and aspects of the means whereby extra-judicial redress may be obtainable at the instance of persons aggrieved².

¹ For at least half a century after the publication of Dicey's *Law of the Constitution* (1st Edn) (1885), the term 'administrative law' was identified with *droit administratif*, a separate body of rules relating to administrative authorities and officials, applied in special administrative courts. As thus defined, administrative law did not exist in England: see Dicey's *Law of the Constitution* (10th Edn) 330. See also *Re Grosvenor Hotel, London (No 2)* [1965] Ch 1210 at 1261, [1964] 3 All ER 354 at 372, CA, per Salmon LJ; *Ridge v Baldwin* [1964] AC 40 at 72, [1963] 2 All ER 66 at 76, HL, per Lord Reid ('We do not have a developed system of administrative law--perhaps because until fairly recently we did not need it'). *Ridge v Baldwin* *supra*, however, and a number of decisions which followed it, marked a significant change in judicial attitudes towards judicial control of administrative action. See *Re Racal Communications Ltd* [1981] AC 374 at 382, [1980] 2 All ER 634 at 638, HL, per Lord Diplock ('[The case of *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147, [1969] 1 All ER 208, HL] is a legal landmark; it has made possible the rapid development in England of a rational and comprehensive system of administrative law on the foundation of the concept of *ultra vires*'); *Breen v Amalgamated Engineering Union* [1971] 2 QB 175 at 189, [1971] 1 All ER 1148 at 1153, CA, per Lord Denning MR ('... there have been important developments in the last 22 years which have transformed the situation. It may truly now be said that we have a developed system of administrative law'); *IRC v National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617 at 641, [1981] 2 All ER 93 at 104, HL, per Lord Diplock ('... [the] comprehensive system of administrative law [which] I regard as having been the greatest achievement of the English courts in my judicial lifetime'); *O'Reilly v Mackman* [1983] 2 AC 237 at 279, [1982] 3 All ER 1124 at 1129, HL, per Lord Diplock; *Mahon v Air New Zealand Ltd* [1984] AC 808 at 816, [1984] 3 All ER

201 at 207, PC ('The extension of judicial control of the administrative process ... over the last 30 years ... has already gone a long way towards providing a system of administrative law as comprehensive in its content as the *droit administratif* of countries of the Civil Law, albeit differing in procedural approach, [and] it is a development [which] is still continuing. It has not yet become static either in New Zealand or in England'); *R v Lancashire County Council, ex p Huddleston* [1986] 2 All ER 941 at 945, 136 NLJ Rep 562, CA, per Sir John Donaldson MR ('Notwithstanding that the courts have for centuries exercised a limited supervisory jurisdiction by means of the prerogative writs, the wider remedy of judicial review and the evolution of what is, in effect, a specialist administrative or public law court is a post-war development. This development has created a new relationship between the courts and those who derive their authority from the public law, one of partnership based on a common aim, namely the maintenance of the highest standards of public administration').

2 Particular aspects of administrative law are considered in more detail in other titles: see eg **COMPULSORY ACQUISITION OF LAND; CONSTITUTIONAL LAW AND HUMAN RIGHTS; CROWN PROCEEDINGS AND CROWN PRACTICE; EDUCATION; EMPLOYMENT; HEALTH SERVICES; HOUSING; LOCAL GOVERNMENT** vol 69 (2009) PARA 1 et seq; **LONDON GOVERNMENT; STATUTES; TOWN AND COUNTRY PLANNING**.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/1. INTRODUCTION/(1) SCOPE AND NATURE OF THE SUBJECT/2. The principle of legality.

2. The principle of legality.

The exercise of governmental authority directly affecting individual interests must rest on legitimate foundations¹. For example, powers exercised by the Crown, its ministers and central government departments must be derived, directly or indirectly², from statute, common law or the royal prerogative³; and the ambit of those powers is determinable by the courts save in so far as their jurisdiction has been excluded by unambiguous statutory language⁴. The Executive does not enjoy a general or inherent rule-making or regulatory power, which is to say that it cannot generate legally binding rules without first having been given authority to do so by the legislature⁵. However, the Executive does have power to regulate the internal functioning of the administrative hierarchy, for example, through ministerial announcements⁶ and departmental circulars⁷ which are intended to influence or direct the conduct of public affairs in matters affecting individual interests⁸. In general, the principle of state necessity cannot be relied on to support the existence of a power or duty⁹, or to justify deviations from lawful authority¹⁰. Moreover, in the absence of express statutory authority, public duties cannot normally be waived or dispensed with by administrative action for the benefit of members of the public¹¹.

1 This proposition is one aspect of the doctrine of the rule of law: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 6.

2 I.e. indirectly, in the case of statutory instruments, byelaws and other subordinate legislation. As to statutory instruments generally see **STATUTES** vol 44(1) (Reissue) para 1499 et seq. As to the power of local authorities to make byelaws see **LOCAL GOVERNMENT** vol 69 (2009) PARA 553 et seq.

3 See **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 367 et seq.

4 As to ouster of jurisdiction see para 21 post.

5 See, however, *R v Criminal Injuries Compensation Board, ex p Lain* [1967] 2 QB 864, [1967] 2 All ER 770, DC, where the court appeared to conclude that a decision by a purely administrative (non-statutory) tribunal was amenable to judicial review by the court; the creation of the tribunal may, however, be explicable as an exercise of the prerogative. See also paras 61-62 post.

6 See eg 804 HC Official Report (5th series), 22 July 1970, cols 548-549 (announcement of decision no longer to collect betterment levy, preceding the enactment of the Land Commission (Dissolution) Act 1971).

7 It was originally thought that departmental circulars had no legal effect whatever, since they have no statutory basis (see, for example, *J & J Colman Ltd v Customs and Excise Comrs* [1968] 2 All ER 832 at 835, [1968] 1 WLR 1286 at 1291, CA, per Lord Denning MR (commissioners' 'notices' cannot alter law)). However,

this principle has now been doubted: see *R (A) v Chief Constable of C* [2001] 1 WLR 461 (failure to comply with government circular not actionable on the basis of illegality although it could be relied upon as evidence of unlawfulness in some other respect of the performance of administrative functions by a public body). In any event, it would appear that circulars may be used as a vehicle for conveying instructions to which some statutes give legal force, for example, directions to local planning authorities under the Town and Country Planning Act 1990. They may also contain legal advice of which the court will take notice: see eg *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112, [1985] 3 All ER 402, HL (Department of Health and Social Security Memorandum of Guidance on contraceptive advice and treatment for children under 16 (December 1980) considered by the court). See also Department of Health Circular LAC (93)10, App 1 (which contains directions issued by the Secretary of State).

The legal status of departmental circulars has been considered in *Blackpool Corp v Locker* [1948] 1 KB 349, [1948] 1 All ER 85, CA; *Jackson Stansfield & Sons v Butterworth* [1948] 2 All ER 558, CA; *Erith Corp v Holder* [1949] 2 KB 46, [1949] 1 All ER 389, CA; *Patchett v Leathem* (1948) 65 TLR 69; *Lewisham Metropolitan Borough and Town Clerk v Roberts* [1949] 2 KB 608, [1949] 1 All ER 815, CA; *Acton Corp v Morris* [1953] 2 All ER 932, [1953] 1 WLR 1228, CA; *J & J Colman Ltd v Customs and Excise Comrs* [1968] 2 All ER 832 at 835, [1968] 1 WLR 1286 at 1291, CA, per Lord Denning MR; *Bristol District Council v Clark* [1975] 3 All ER 976, [1975] 1 WLR 1443, CA; *R v Worthing Borough Council, ex p Burch* (1983) 50 P & CR 53; *Gillick v West Norfolk and Wisbech Area Health Authority* supra at 193 and 427 per Lord Bridge of Harwich (where a circular contains advice which is erroneous in law, a person with locus standi may correct the error by means of a declaration), and at 206 and 436 per Lord Templeman. In a number of cases the courts have reviewed government circulars without considering whether the circulars had legal force (see eg *R v Secretary of State for the Environment, ex p Greenwich London Borough Council* [1989] COD 530, Times, 17 May, DC; *R v Deputy Governor of Parkhurst Prison, ex p Hague* [1992] 1 AC 58, [1991] 3 All ER 733, HL; *R v Secretary of State for Health, ex p Pfizer Ltd* [1999] 3 CMLR 875, 51 BMLR 136).

Certain statutes empower a minister to give guidance to public bodies: see eg the Civil Aviation Act 1971 (repealed: see now the Civil Aviation Act 1982 s 6; and **AIR LAW** vol 2 (2008) PARAS 42, 53), and *Laker Airways Ltd v Department of Trade* [1977] QB 643, [1977] 2 All ER 182, CA; the Housing (Homeless Persons) Act 1977 (repealed), and *R v Waveney District Council, ex p Bowers* [1983] QB 238, [1982] 3 All ER 727, CA. The observance of ministerial guidance may or may not be mandatory: see eg *R v North Yorkshire County Council, ex p Hargreaves* (1994) 26 BMLR 121, (1994) Times, 9 November; *R v Islington London Borough Council, ex p Rixon* (1996) 32 BMLR 136, (1996) Times, 17 April (guidance giving effect to statutory policy was mandatory in the case of educational facilities for the disabled). Ministerial guidance or directions will be struck down if they are ultra vires: *Laker Airways Ltd v Department of Trade* supra (guidance ultra vires); *R v Secretary of State for Social Services, ex p Stitt* (1990) Times, 5 July, (1990) Independent, 6 July, CA (directions upheld but court recognised they could be ultra vires).

8 As to the Secretary of State's power to issue guidance which advocates an outcome which the Secretary of State seeks to achieve see further *R v Secretary of State for the Environment, ex p Lancashire County Council* (1995) 160 LG Rev 442, (1995) Times, 9 December.

9 *Entick v Carrington* (1765) 19 State Tr 1029 at 1073; *Ghani v Jones* [1970] 1 QB 693, [1969] 3 All ER 700, CA; *Congreve v Home Office* [1976] QB 629, [1976] 1 All ER 697, CA; although cf *R v Stratton* (1779) 21 State Tr 1045 at 1230; *Elias v Pasmore* [1934] 2 KB 164 at 173 per Horridge J; *Sabally and N'jie v A-G* [1965] 1 QB 273 at 293, [1964] 3 All ER 377 at 380, CA, per Lord Denning MR; *Butler v Board of Trade* [1971] Ch 680 at 691, [1970] 3 All ER 593 at 599-600 per Goff J; *Malone v Metropolitan Police Comr* [1979] Ch 344 at 357, [1979] 2 All ER 620 at 630 per Sir Robert Megarry V-C ('England is not a country where everything is forbidden except where it is expressly permitted: it is a country where everything is permitted except what is expressly forbidden').

10 Necessary acts not authorised by existing law may subsequently be the subject of indemnifying legislation: see eg the Indemnity Act 1920 (repealed); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 6. Acts of indemnity may also be passed in other contexts: see eg the Town and Country Planning Regulations (London) (Indemnity) Act 1970 (repealed) (failure to lay regulations before Parliament).

11 See para 23 post. Formal announcements and informal offers of extrastatutory tax concessions have long been made by the revenue authorities (see *First Report from the Select Committee on the Parliamentary Commissioner for Administration* (HC Paper (1970-71) No 240)), but the legality of such concessions has been questioned: see *Absalom v Talbot* [1943] 1 All ER 589 at 598, CA, per Scott LJ; *IRC v Frere* [1965] AC 402 at 429, [1964] 3 All ER 796 at 806, HL, per Lord Radcliffe; *Bates v IRC* [1968] AC 483 at 516, [1967] 1 All ER 84 at 96, HL, per Lord Upjohn and at 521 and 99-100 per Lord Wilberforce; *R v Customs and Excise Comrs, ex p Cooke and Stevenson* [1970] 1 All ER 1068 at 1071-1072 per Lord Parker CJ; *Vestey v IRC* [1979] Ch 177 at 197, [1977] 3 All ER 1073 at 1098 per Walton J ('One should be taxed by law and not be untaxed by concession'); *Vestey v IRC (Nos 1 and 2)* [1980] AC 1148 at 1173, [1979] 3 All ER 976 at 985, HL, per Lord Wilberforce, and at 1194 et seq and 1001 et seq per Lord Edmund-Davies; *R v A-G, ex p Imperial Chemical Industries plc* [1987] 1 CMLR 72, (1986) 60 TC, CA. See also *Drummond v Collins* [1915] AC 1011 at 1018, HL, per Lord Loreburn. But cf *IRC v National Federation of Self-Employed and Small Businesses Ltd* [1982] AC 617 at 632, 635, [1981] 2 All ER 93 at 98, 100, HL, per Lord Wilberforce, and at 636-637 and 101 per Lord Diplock; *R v Inspector of Taxes, Reading, ex p Fulford-Dobson* [1987] QB 978, [1987] 3 WLR 277; *R v HM Inspector of Taxes, Hull, ex p Brunfield* (1988)

Times, 25 November; *R v IRC, ex p Unilever plc* [1996] STC 681, 68 TC 205, CA. As to the scope of police discretion not to prosecute for crimes see *R v Metropolitan Police Comr, ex p Blackburn* [1968] 2 QB 118, [1968] 1 All ER 763, CA; *Buckoke v GLC* [1971] 1 Ch 655, [1971] 2 All ER 254, CA; *R v Metropolitan Police Comr, ex p Blackburn (No 3)* [1973] QB 241, [1973] 1 All ER 324, CA; *Adams v Metropolitan Police Comr* [1980] RTR 289; *R v Oxford, ex p Levey* (1986) Times, 1 November.

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2 The principle of legality

NOTE 4--See *R (on the application of Shrewsbury & Atcham BC) v Secretary of State for Communities and Local Government* [2008] EWCA Civ 148, [2008] 3 All ER 548.

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(2) THE ADMINISTRATION AND THE FUNCTIONS OF GOVERNMENT

3. Administrative structure.

The machinery of central government¹ comprises the Queen in Council, departments of state under Secretaries of State² or ministers, subordinate departments or sub-departments (such as the Board of Inland Revenue³, the Land Registry⁴ and the Meteorological Office) headed by officials but subject to the ultimate authority of a minister, miscellaneous quasi-governmental bodies which are responsible for particular advisory, regulatory or promotional functions, such as the British Council⁵, the English Tourist Board⁶, the Countryside Agency⁷ the Commission for Racial Equality⁸ and the Law Commission⁹. There are also semi-autonomous public corporations responsible for the provision or management of a public service¹⁰, for example the British Broadcasting Corporation¹¹, the Civil Aviation Authority¹², the Independent Television Commission¹³ and the Radio Authority¹⁴. Other ad hoc public bodies include, for example health authorities¹⁵, NHS Trusts¹⁶ and local government authorities¹⁷. In general, the question whether a public body not forming part of a government department is to be regarded as an agent or servant of the Crown is determinable by reference to the degree of its independence from ministerial control¹⁸. 'Administrative' tribunals are normally classifiable as machinery provided 'for adjudication rather than as part of the machinery of administration'¹⁹, but their members while acting in their capacity as members may still be Crown servants²⁰.

1 See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. As to the National Assembly for Wales established under the Government of Wales Act 1998 see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

2 As to the office of Secretary of State see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 355 et seq.

3 As to the Board of Inland Revenue see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 709; **INCOME TAXATION**.

4 As to the Land Registry see **LAND REGISTRATION** vol 26 (2004 Reissue) para 1064 et seq.

5 As to the British Council see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 966.

6 As to the English Tourist Board see **TRADE AND INDUSTRY** vol 97 (2010) PARA 928.

7 As to the Countryside Agency see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523.

8 As to the Commission for Racial Equality see **DISCRIMINATION** vol 13 (2007 Reissue) para 488 et seq.

9 As to the Law Commission see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 957.

10 The actions of such semi-autonomous public corporations are generally considered to be judicially reviewable in circumstances where the actions themselves are of a public law character: *R v Independent Television Commission, ex p TSW Broadcasting Ltd* [1996] EMLR 291, (1992) Times, 30 March, HL (ITC's licensing decisions reviewable); *R v British Coal Corpn, ex p Vardy* [1993] ICR 720, [1993] IRLR 104, DC (decision to close colliery reviewable); cf *R v National Coal Board, ex p National Union of Mineworkers* [1986] ICR 791 (decision to close colliery was a commercial decision and not reviewable). The question of the reviewability of the British Broadcasting Corporation, which is a chartered, non-statutory body, has been left open (*R v British Broadcasting Corpn, ex p Referendum Party* (1997) 9 Admin LR 553, [1997] EMLR 605, DC) as has the status of the National Trust which is a statutory corporation (see *Ex p Scott* [1998] 1 WLR 226, where the claim failed on the basis it should have been brought under the Charities Act 1993); cf the position of the non-statutory Press Complaints Commission (*R v Press Complaints Commission, ex p Stewart-Brady* (1997) 9 Admin LR 274, [1997] EMLR 185, CA; cf *R v Criminal Cases Review Commission, ex p Pearson* [1999] 3 All ER 498, [1999] Crim LR 732, DC (decision of Commission reviewable). The Independent Broadcasting Authority was held to be subject to judicial review in exercising statutory powers but not in exercising its voting powers in the applicant company: *R v Independent Broadcasting Authority, ex p Rank Organisation plc* (1986) Times, 14 March. See also *R v British Standards Commission, ex p British Broadcasting Corpn* [2000] 3 All ER 989, [2000] 3 WLR 1327, CA (decisions of Commission reviewable). As to the reviewability of urban development corporations see further *R v Teeside Development Corpn, ex p William Morrison Supermarket plc* [1998] JPL 23 (decision of Corporation reviewable). See further the Human Rights Act 1998 s 6, which provides that a public authority with both private and public law functions may act unlawfully for the purposes of the Act if it exercises a public law function in a way that is incompatible with an individual's human rights but will not be acting unlawfully for the purposes of the Act if it is only exercising a private law function: see para 87 post.

11 As to the British Broadcasting Corporation see **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (Reissue) para 306 et seq.

12 As to the Civil Aviation Authority see **AIR LAW** vol 2 (2008) PARA 50 et seq.

13 As to the Independent Television Commission see **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (Reissue) para 328.

14 As to the Radio Authority see **SALE OF GOODS AND SUPPLY OF SERVICES** vol 41 (2005 Reissue) para 403; **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (Reissue) paras 226, 439 et seq.

15 See **HEALTH SERVICES** vol 54 (2008) PARA 94 et seq.

16 As to NHS Trusts see **HEALTH SERVICES** vol 54 (2008) PARA 155 et seq.

17 See **LOCAL GOVERNMENT** vol 69 (2009) PARAS 22 et seq, 37 et seq.

18 See especially *Tamlin v Hannaford* [1950] 1 KB 18, [1949] 2 All ER 327, CA (former British Transport Commissioner not Crown servant). The point is usually made clear by statute: see eg the Atomic Energy Authority Act 1954 s 6(1), (3)-(5) (s 6(3) as amended) (see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(1) (2006 Reissue) para 479; **FUEL AND ENERGY** vol 19(3) (2007 Reissue) para 1363 et seq); and the Transport Act 1968 ss 52(5), 160 (as amended) (see **STAMP DUTIES AND STAMP DUTY RESERVE TAX** vol 44(1) (Reissue) para 1050). See further *British Broadcasting Corpn v Johns* [1965] Ch 32, [1964] 1 All ER 923, CA; *Foster v British Gas plc* [1988] ICR 584, CA (British Gas, constituted in its then nationalised form under the Gas Act 1972 (repealed) was not a 'state authority' for the purposes of the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179); *Rolls-Royce plc v Doughty* [1987] ICR 932, [1987] IRLR 447, EAT; *Malins v Post Office* [1975] ICR 60, EAT.

The following corporations all operate independently of the Crown: the Civil Aviation Authority (see the Civil Aviation Act 1980; and **AIR LAW** vol 2 (2008) PARA 50); the Health and Safety Executive (see the Health and Safety at Work etc Act 1974; and **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 361 et seq); the Gaming Board (see the Gaming Act 1968; and **LICENSING AND GAMBLING** vol 67 (2008) PARA 5); and the Independent Television Commission and the Radio Authority (see the Broadcasting Act 1990; and **TELECOMMUNICATIONS AND BROADCASTING** vol 45(1) (Reissue) paras 226, 328, 439 et seq, 417 et seq). The National Health Service's Crown immunities have largely been stripped away by the National Health Service and Community Care Act 1990 s 60 (see **HEALTH SERVICES** vol 54 (2008) PARA 94), which provides that no national health service body is to be regarded as a servant or agent of the Crown. The Postal Services Act 2000 has the effect of transforming the Post Office from a semi-autonomous public corporation into a publicly owned company, with all shares in the company being owned by the Crown: see **POST OFFICE**. For the general principles determining whether bodies corporate are Crown servants see *Bank voor Handel en Scheepvaart NV v Administrator of Hungarian Property* [1954] AC 584, [1954] 1 All ER 969, HL.

19 See the *Report of the Committee on Administrative Tribunals and Enquiries* (Cmnd 218) (1958) para 40; and *A-G v British Broadcasting Corp* [1981] AC 303, [1980] 3 All ER 161, HL. In *R v Deputy Industrial Injuries Comr, ex p Jones* [1962] 2 QB 677 at 685, [1962] 2 All ER 430 at 432, DC, Lord Parker CJ called the Commissioner a 'quasi-judicial tribunal'. See also *R v Deputy Industrial Injuries Comr, ex p Moore* [1965] 1 QB 456 at 486, [1965] 1 All ER 81 at 93, CA, per Lord Diplock. Administrative tribunals have the character of courts since they generally find facts and then apply legal rules to them. However, they are referred to as administrative tribunals on the basis that they are enmeshed in the machinery of the state; they are part of an administrative scheme for which a minister is responsible to Parliament, and the reasons for preferring them to the ordinary courts are administrative reasons. Such tribunals include employment tribunals, mental health tribunals and immigration appeal tribunals: see further para 13 post.

20 Cf the divergence of opinion expressed in *Ranaweera v Ramachandran* [1970] AC 962, PC (see para 9 note 5 post). Members cannot be Crown servants unless appointed by the Crown or a minister. See also *Jones v Department of Employment* [1989] QB 1 at 11, [1988] 1 All ER 725 at 727-728, CA, per Glidewell LJ; *Welsh v Chief Constable of the Merseyside Police* [1993] 1 All ER 692.

UPDATE

3 Administrative structure

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

NOTE 1--As to the National Assembly for Wales and the Welsh Assembly Government, see the Government of Wales Act 2006; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 42A et seq.

NOTE 18--Gaming Board replaced by Gambling Commission: see **LICENSING AND GAMBLING** vol 67 (2008) PARAS 4-5.

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4. Organs and functions of government.

There are three principal organs of government: the legislature (the Queen in Parliament¹), the Executive (or administration)², and the judiciary³. The functions of government are classified as legislative, executive (or administrative) and judicial. Broadly speaking, legislative acts entail the formulation, making and promulgation of new rules of law which are general in terms of their application; executive and administrative acts entail the application of the legal rules developed by the legislature to particular situations or cases through the development of policies and the making and executing of individual discretionary decisions; judicial acts involve: (1) the determination of questions of law and fact, or the exercise of limited discretionary power, in relation to claims and controversies susceptible of resolution by reference to pre-existing legal rules or standards; and (2) the adoption of a procedure analogous to that of a court of law in the course of resolving a disputed issue. Potentially important legal consequences flow from the designation of a function as legislative⁴, executive or administrative⁵, or judicial⁶ (or quasi-judicial⁷). Precise definitions of these categories are, however, unattainable; one class of function tends to shade off into another, and in practice classification varies according to the context and the purpose for which classification is attempted⁸.

1 See **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 201 et seq; **PARLIAMENT** vol 78 (2010) PARA 1 et seq.

2 See **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 351 et seq.

3 See **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 301 et seq; **COURTS**.

4 Eg whether an instrument is a statutory instrument within the meaning of the Statutory Instruments Act 1946 (see **STATUTES** vol 44(1) (Reissue) para 1503) and, if so, whether it has to be published, may depend on whether it is of a legislative or of an executive character: see the Statutory Instruments Regulations 1947, SI 1948/1, regs 2, 11; the Statutory Instruments (Confirmatory Powers) Order 1947, SI 1948/2, art 1; and **STATUTES** vol 44(1) (Reissue) para 1503 et seq. The duty of ministers to give reasons for their decisions upon request in relation to matters that have been or could have been the subject of a statutory inquiry (ie under the Tribunals and Inquiries Act 1992 s 10(1)), does not extend to schemes or orders of a legislative character: s 10(5)(b). See *McEldowney v Forde* [1971] AC 632, [1969] 2 All ER 1039, HL (validity of regulation in Northern Ireland dependent on whether it was a legislative or an executive act).

In general, Parliamentary (or primary) legislation may not be challenged in the courts (as to the principle of Parliamentary supremacy see further para 17 post). However, this rule does not apply in circumstances where primary legislation conflicts with a directly effective provision of European Union law. In these circumstances, the courts will override conflicting provisions within the primary legislation in order to give effect to the European Union legislative provision: see especially Case C-48/93 *R v Secretary of State for Transport, ex p Factortame Ltd (No 4)* [1996] ECR I-1029, [1996] All ER (EC) 301, ECJ; Case C-392/93 *R v HM Treasury, ex p British Telecommunications plc* [1996] ECR I-1631, [1996] All ER (EC) 411, ECJ. In contrast, subordinate (or secondary) legislation may generally be challenged in the courts since that subordinate legislation is necessarily subject to the principles of ultra vires (see further para 74 et seq post). See eg *R v HM Treasury, ex p Smedley* [1985] QB 657 at 666, [1985] 1 All ER 589 at 593, CA, per Sir John Donaldson MR; *R v Secretary of State for the Home Department, ex p Leech* [1994] QB 198, [1993] 4 All ER 539, CA; *R v Secretary of State for Social Security, ex p Joint Council for the Welfare of Immigrants* [1996] 4 All ER 385, [1997] 1 WLR 275, CA; *Boddington v British Transport Police* [1999] 2 AC 143, [1998] 2 All ER 203, HL; *R v Lord Chancellor, ex p Witham* [1998] QB 575, [1997] 2 All ER 779, DC; cf *R v Lord Chancellor, ex p Lightfoot* [2000] QB 597, [1999] 4 All ER 583, CA. See also Case 222/84 *Johnston v Chief Constable of the Royal Ulster Constabulary* [1987] QB 129, [1986] 3 All ER 135, ECJ (Northern Ireland sex discrimination order was unlawful because it violated an EC Council directive). The Human Rights Act 1998, which incorporates the majority of rights guaranteed under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) Cmd 8969), further entrenches the general principle that, save where a directly effective provision of European Union law is in issue, the judiciary's powers to strike down legislation extends only to secondary and not to primary legislation. See further the Human Rights Act 1998 s 3 which empowers courts to strike down secondary legislation which is incompatible with incorporated Convention rights in certain circumstances. The court also has a power under s 4 to make a declaration of incompatibility in circumstances where a particular primary legislative provision is incompatible with incorporated Convention rights. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

5 In contrast with acts of the legislature, acts of the Executive will usually be amenable to review by the courts on the basis that in general the Executive may only do such things as are expressly or impliedly permitted by the law: see note 4 supra. See also the Parliamentary Commissioner Act 1967 s 5(1) (jurisdiction of Parliamentary Commissioner for Administration limited to investigation of complaints in respect of administrative acts by scheduled departments and their officers: see further para 41 post). The provisions of the Tribunals and Inquiries Act 1992 do not apply to the working, decisions or procedure of certain tribunals in the exercise of their executive functions: see s 14(1); and para 56 post.

6 Courts in recent years have, however, placed little if any reliance upon a strict dichotomy between judicial and administrative functions in deciding whether to grant judicial review of an act or decision. For example, it is now clear that a duty to act in conformity with the principles of natural justice extends to administrative functions as it extends to judicial functions: see eg *Ridge v Baldwin* [1964] AC 40, [1963] 2 All ER 66, HL; *A-G v Ryan* [1980] AC 718, [1980] 2 WLR 143, PC; *Payne v Lord Harris of Greenwich* [1981] 2 All ER 842, [1981] 1 WLR 754, CA (overruled on other grounds in *R v Home Secretary, ex p Doody* [1994] 1 AC 531, HL); *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 407, [1984] 3 All ER 935 at 948, HL, per Lord Scarman; cf *Errington v Minister of Health* [1935] 1 KB 249, CA; *Nakkuda Ali v Jayaratne* [1951] AC 66, PC. See further para 95 post. The distinction remains valid for other purposes, however. For example, the law of contempt (see **CONTEMPT OF COURT**) applies to an inferior court, but not to an administrative tribunal such as a local valuation court: *A-G v British Broadcasting Corp* [1981] AC 303, [1980] 3 All ER 161, HL; *Peach Grey & Co v Sommers* [1995] 2 All ER 513, [1995] ICR 549, DC; *General Medical Council v British Broadcasting Corp* [1998] 3 All ER 426, [1998] 1 WLR 1573, CA. Administrative and judicial functions can no longer be distinguished on the basis that advocates enjoy immunity from tortious liability attaching to acts done and statements made in the course of judicial proceedings following the decision of the House of Lords in *Arthur JS Hall & Co v Simons* [2000] 3 All ER 673, [2000] 3 WLR 543, HL. The Crown is not vicariously liable for the defaults of its officers in the discharge or purported discharge of responsibilities of a judicial nature: see the

Crown Proceedings Act 1947 s 2(5); and *Royal Aquarium and Summer and Winter Garden Society Ltd v Parkinson* [1892] 1 QB 431, CA; *Addis v Crocker* [1961] 1 QB 11, [1960] 2 All ER 629, CA; *Jones v Department of Employment* [1989] QB 1, [1988] 1 All ER 725, CA; *Welsh v Chief Constable of the Merseyside Police* [1993] 1 All ER 692; *Elguzouli-Daf v Metropolitan Police Comr* [1995] QB 335, [1995] 1 All ER 833, CA. See also the Parliamentary Commissioner Act 1967 s 5(1); and note 5 supra. Only in exceptional circumstances may functions of a judicial character be sub-delegated in the absence of express statutory authority: see *Barnard v National Dock Labour Board* [1953] 2 QB 18, [1953] 1 All ER 1113, CA; *R v Gateshead Justices, ex p Tesco Stores Ltd* [1981] QB 470, [1981] 1 All ER 1027, DC; and para 31 post.

7 Quasi-judicial means analogous to judicial either procedurally or substantively.

8 See paras 117-119, 133-150 post. The intermingling of constitutional functions in the United Kingdom has been subject to criticism in the European Court of Human Rights: see *V v United Kingdom* (2000) 30 EHRR 121 at 186, ECtHR (procedure by which tariffs were set for prisoners breached the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 6(1) (right to a fair hearing before an independent and impartial tribunal) (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 134 et seq) since the ultimate decision maker was the Home Secretary and not a court or tribunal).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/1. INTRODUCTION/(2) THE ADMINISTRATION AND THE FUNCTIONS OF GOVERNMENT/5. Separation of functions.

5. Separation of functions.

A number of constitutional systems incorporate versions of the doctrine of separation of powers. The doctrine may imply: (1) that a particular class of function ought to be confided only to the corresponding organ of government (for example, that legislative functions must be vested only in the legislature); (2) that the personnel of the three main organs of government must be distinct (for example, that ministers must not be members of the legislature); or (3) that the autonomy of each branch of government must be immune from undue encroachments from any of the others¹. In Great Britain there are no fundamental constitutional guarantees or prohibitions, and important rules of British constitutional law and practice are inconsistent with well-known versions of the doctrine². For instance, the political executive is parliamentary; legislative and judicial functions are reposed in members of the executive branch³; and the Lord Chancellor⁴ is a member of all three branches of government. Nevertheless, the judiciary is substantially insulated, by virtue of rules of strict law, constitutional conventions, political practice, and professional tradition, from political influence⁵. In some Commonwealth countries it is unconstitutional for the Executive or the legislature to encroach on the domain impliedly reserved to the judiciary⁶, or for judicial functions to be vested in bodies other than courts⁷, or for judicial officers to be appointed by the Executive⁸.

1 See further **COMMONWEALTH** vol 13 (2009) PARA 735 et seq; **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 8.

2 See, however, *Duport Steels Ltd v Sirs* [1980] 1 All ER 529 at 541, [1980] 1 WLR 142 at 157, HL, per Lord Diplock ('it cannot be too strongly emphasised that the British constitution, though largely unwritten, is firmly based upon the separation of powers'), and at 551 and 168-169 per Lord Scarman.

3 For example, the Home Secretary exercises the power to grant pardon. See also the Imprisonment (Temporary Provisions) Act 1980 (see **PRISONS** vol 36(2) (Reissue) para 538); and the Customs and Excise Management Act 1979 s 152(d) (see **CUSTOMS AND EXCISE** vol 12(3) (2007 Reissue) para 1188).

4 As to the office of Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 477 et seq.

5 See *Abse v Smith* [1986] QB 536 at 554, [1986] 1 All ER 350 at 360, CA, per Sir John Donaldson MR; *Sherdley v Sherdley* [1986] 2 All ER 202 at 206, [1986] 1 WLR 732 at 736, CA, per Sir John Donaldson MR. See

also *Duport Steels Ltd v Sirs* [1980] 1 All ER 529 at 541, [1980] 1 WLR 142 at 157, HL, per Lord Diplock and at 551 and 168-169 per Lord Scarman; *Chokolingo v A-G of Trinidad and Tobago* [1981] 1 All ER 244 at 247-248, [1981] 1 WLR 106 at 110-111, PC. See also *R v HM Treasury, ex p Smedley* [1985] QB 657 at 666, [1985] 1 All ER 589 at 593, CA, per Sir John Donaldson MR; *Nottinghamshire County Council v Secretary of State for the Environment* [1986] AC 240 at 250, [1986] 1 All ER 199 at 204, HL, per Lord Scarman.

6 See especially *Liyanage v R* [1967] 1 AC 259, [1966] 1 All ER 650, PC (Ceylon); cf *Kariapper v Wijesinha* [1968] AC 717, [1967] 3 All ER 485, PC (Ceylon), on implied prohibitions against retroactive penal legislation and bills of attainder; and *Hinds v R* [1977] AC 195, [1976] 1 All ER 353, PC (Jamaica) (only the judiciary can determine the severity of an individual's sentence); applied in *Ali v R* [1992] 2 AC 93, [1992] 2 All ER 1, PC; *Browne v R* [2000] 1 AC 45, [1999] 3 WLR 1158, PC.

7 Under the constitution of the Commonwealth of Australia, judicial functions can be vested only in courts within the meaning of Chapter 3 of the constitution (Commonwealth of Australia Constitution Act (1900) s 9); and functions alien to the judicial cannot validly be vested in such a court unless they are merely ancillary to judicial functions: *A-G for Commonwealth of Australia v R and Boilermakers' Society of Australia* [1957] AC 288, [1957] 2 All ER 45, PC. In Canada, judicial functions can be vested in bodies other than courts, provided that the effect of conferring such functions by federal law is not to constitute the recipient body as a court whose members are appointed by an authority other than the Governor General under the British North America Act 1867 s 96 (the British North America Act 1867 is known in Canada as the Constitution Act 1867). See also the Canada Act 1982 (enacting the Constitution Act 1982, which sets out a bill of rights and terminates Parliament's power to legislate for Canada: see **COMMONWEALTH** vol 13 (2009) PARAS 722, 745 et seq); *Manuel v A-G* [1983] Ch 77, [1982] 3 All ER 822, CA); *Labour Relations Board of Saskatchewan v John East Ironworks Ltd* [1949] AC 134, PC.

8 This was prohibited by the Ceylon (Constitution and Independence) Orders in Council 1946 and 1947 (dated 15 May 1946, 3 July, 8 August, 26 November and 19 December 1947) s 55. As to the meaning of a 'judicial' officer (who could validly be appointed only by the Judicial Service Commission) see *Bribery Comr v Ranasinghe* [1965] AC 172, [1964] 2 All ER 785, PC; *United Engineering Workers' Union v Devanayagam, President Eastern Province Agricultural Co-operative Union Ltd* [1968] AC 356, [1967] 2 All ER 367, PC; *Ranaweera v Wickramasinghe* [1970] AC 951, PC; *Ranaweera v Ramachandran* [1970] AC 962, PC. Definitions of the term 'judicial' formulated for the purposes mentioned in this paragraph are not necessarily relevant in the contexts referred to in para 4 ante. Ceylon, now designated as the Republic of Sri Lanka (see the Sri Lanka Republic Act 1972), adopted a new republican constitution in 1972: see **COMMONWEALTH** vol 13 (2009) PARA 781.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/1. INTRODUCTION/ (3) PUBLIC BODIES AND OFFICERS/6. Public bodies and public authorities.

(3) PUBLIC BODIES AND OFFICERS

6. Public bodies and public authorities.

Broadly speaking, a public authority may be described as a person or administrative body entrusted with functions to perform for the benefit of the public and not for private profit¹. Not every such person or body is expressly defined as a public authority or body², and the meaning of a public authority or body may vary according to the statutory context³. The question whether a particular body is or is not a public authority has assumed increased importance since the coming into force of the Human Rights Act 1998⁴. Under that Act, it is unlawful for a 'public authority' to act in a way which is incompatible with those rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms⁵ which have been incorporated into domestic law by the Human Rights Act 1998⁶.

1 See eg *Welch v Bank of England* [1955] Ch 508 at 541, [1955] 1 All ER 811 at 827; *A-G v Margate Pier and Harbour Co of Proprietors* [1900] 1 Ch 749; *Lyles v Southend-on-Sea Corp* [1905] 2 KB 1, CA; *Parker v LCC* [1904] 2 KB 501 (decisions on the meaning of public authorities for the purpose of limitation of actions; see also note 3 infra). Cf *R v Joy and Emmony* (1974) 60 Cr App Rep 132 (a 'public body' for the purposes of the Prevention of Corruption Act 1916 is one, whether elected or created by statute, which functions and performs its duties for the benefit of the public as opposed to private gain); *R v Hirst and McNamee* (1975) 64 Cr App Rep

151; *DPP v Manners* [1978] AC 43, [1977] 1 All ER 316, HL (approving *R v Joy and Emmony* supra). See also *R (on the application of Sunspell) v Association of British Travel Agents* [2000] All ER (D) 1368 (ABTA not a public body).

For decisions on the question of whether particular bodies are 'state authorities' for the purposes of the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 249 (formerly art 189 and renumbered by virtue of the Treaty of Amsterdam: see *Treaty Citation (No 2) (Note)* [1999] All ER (EC) 646, ECJ) see further *Foster v British Gas plc* [1991] 2 AC 306, [1991] 2 All ER 705, HL (British Gas Corporation was a 'state authority' for the purposes of the EC Treaty art 249 (as so renumbered)); *Rolls-Royce plc v Doughty* [1992] ICR 538, [1992] IRLR 126, CA (government-owned company was not a 'state authority' for the purposes of the EC Treaty art 249 (as so renumbered)); although cf *Griffin v South West Water Services Ltd* [1995] IRLR 15 (privatised water company was a 'state authority' for the purposes of EC Treaty art 249 (as so renumbered)). See also *National Union of Teachers v Governing Body of St Mary's Church of England (Aided) Junior School* [1997] ICR 334, [1997] IRLR 242, CA.

2 Eg the National Coal Board (see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) para 2) was not so defined in the Coal Industry Nationalisation Act 1946; and Cable and Wireless Ltd, then a government-owned company, was not so defined by the Cable and Wireless Act 1946 and was probably not to be regarded as a public authority for most purposes. Under the Human Rights Act 1998, the test for whether a particular body is or is not a public authority is not so much whether that body is defined as such by statute but rather whether the functions which that body discharges are themselves public in nature: see s 6; and para 87 post. See also note 6 infra.

3 For the purposes of the Prevention of Corruption Acts 1889 to 1916, 'public body' includes 'local and public authorities of all descriptions' (Public Bodies Corrupt Practices Act 1889 s 7; Prevention of Corruption Act 1916 s 4(2)), and this definition is wide enough to embrace the former (nationalised) North Thames Gas Board: *DPP v Manners* [1978] AC 43, [1977] 1 All ER 316, HL (disapproving *R v Newbould* [1962] 2 QB 102, [1962] 1 All ER 693); *R v Joy and Emmony* (1974) 60 Cr App Rep 132; *R v Hirst and McNamee* (1975) 64 Cr App Rep 151. See also the Public Bodies (Admission to Meetings) Act 1960 s 2(1), Schedule (as amended) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 641); the Countryside Act 1968 s 49(2); the Local Authorities (Goods and Services) Act 1970 s 1(4) (as amended), (5) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 495). The National Assembly for Wales (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**) is a public body for the purposes of the Prevention of Corruption Acts 1889 to 1916: see the Government of Wales Act 1998 s 79.

4 The Human Rights Act 1998 came into force on 2 October 2000: see the Human Rights Act 1998 (Commencement No 2) Order 2000; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

5 Ie the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) Cmd 8969): see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 122 et seq.

6 See the Human Rights Act 1998 ss 1, 6; and para 87 post. For the meaning of 'public authority' see para 87 note 2 post.

UPDATE

6 Public bodies and public authorities

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/1. INTRODUCTION/ (3) PUBLIC BODIES AND OFFICERS/7. Statutory undertakers.

7. Statutory undertakers.

Statutory undertakers may be defined as persons authorised by an enactment to provide public utilities, services and supplies, such as inland public transport by rail or other means, canals, docks, harbours, piers, lighthouses, electricity, hydraulic power and water¹. They are usually,

but not invariably, public authorities; in some instances they may be private commercial undertakings, for example water companies.

1 See eg the Local Government, Planning and Land Act 1980 s 170(1), (2) (as amended) (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) paras 1429, 1454); and the Town and Country Planning Act 1990 s 262 (as amended) (see **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) para 1009). Other bodies which are 'statutory undertakers' for certain statutory purposes are the Civil Aviation Authority (see the Civil Aviation Act 1982 s 19(2), Sch 2 para 4 (as amended) and airports to which the Airports Act 1986 Pt V (ss 57-62) applies (see the Airports Act 1986 s 58, Sch 2 para 1 (amended)): see **AIR LAW** vol 2 (2008) PARA 216. As to the meaning and legal position of statutory undertakers see further the Land Compensation Act 1961 s 11 (compulsory purchase); the Town and Country Planning Act 1990 Pt XI (ss 262-283) (as amended); and **TOWN AND COUNTRY PLANNING** vol 46(3) (Reissue) para 1009 et seq.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/1. INTRODUCTION/ (3) PUBLIC BODIES AND OFFICERS/8. Public functions.

8. Public functions.

The fact that a person or body exercises functions of a public nature does not conclusively establish that such a person or body is a public authority¹. Nevertheless, significant legal consequences may attach to a finding that a given function is public rather than private. For example, quashing and prohibiting orders² will issue to a body only if its functions are of a public and not merely private nature³; a mandatory order may be granted to procure the performance of a public duty but not a private duty⁴; and the Attorney-General, acting on behalf of the public, may intervene to secure the due execution of a public trust but not a private trust⁵, or to restrain a public nuisance but not a private nuisance⁶. Further, under the Human Rights Act 1998, where a body has mixed private and public law functions, it is only in the exercise of its public functions that that body will be subject to the obligation to act compatibly with rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms⁷.

1 For instance, under the Human Rights Act 1998, a body which discharges a mixture of public and private functions will only be a 'public authority' for the purposes of s 6 as and when it is discharging its public functions: see s 6(3)(b), (5); and para 87 post. It seems that participation in the proceedings of the House of Lords (which would not be styled a public authority) is the exercise of a 'public function' within the meaning of the Sex Disqualification (Removal) Act 1919 s 1 (as amended): see *Viscountess Rhondda's Claim* [1922] 2 AC 339, HL.

2 A quashing order was formerly known as an order of certiorari (see para 117 note 1 post) and a prohibiting order was formerly known as an order of prohibition (see para 117 note 2 post). As to quashing and prohibiting orders see para 123 et seq post.

3 See eg *R v Criminal Injuries Compensation Board, ex p Lain* [1967] 2 QB 864 at 882, [1967] 2 All ER 770 at 778, DC, per Diplock LJ and at 892 and 783 per Ashworth J; *R v Panel on Take-overs and Mergers, ex p Datafin plc* [1987] QB 815, [1987] 1 All ER 564, CA; *R v Code of Practice Committee of the Association of the British Pharmaceutical Industry, ex p Professional Counselling Aids Ltd* [1991] COD 228, (1990) 10 BMLR 21; *R v Football Association of Wales, ex p Flint Town United Football Club* [1991] COD 44, DC; *R v Chief Rabbi of the United Hebrew Congregations of Great Britain and the Commonwealth, ex p Wachmann* [1993] 2 All ER 249, [1992] 1 WLR 1036; *R v Disciplinary Committee of the Jockey Club, ex p Aga Khan* [1993] 2 All ER 853, [1993] 1 WLR 909, CA; *R v Football Association Ltd, ex p Football League Ltd* [1993] 2 All ER 833, [1992] COD 52; *R v Secretary of State for Trade and Industry, ex p Vardy* [1993] ICR 720, sub nom *R v British Coal Corp'n and the Secretary of State for Trade and Industry, ex p Vardy* [1993] 1 CMLR 721, DC; *R v Insurance Ombudsman Bureau, ex p Aegon Life Insurance Ltd* [1994] COD 426, Times, 7 January, DC; *R v Imam of Bury Park Jame Masjid, Luton, ex p Ali (Sulaiman)* [1994] COD 142, (1993) Times, 20 May, CA; *Re Sherlock and Morris* (29 November 1996), Lexis, Enggen Library, Cases File; *R v Press Complaints Commission, ex p Stewart-Brady* [1997] COD 203, [1997] EMLR 185, CA; *R v London Beth Din, ex p Bloom* [1998] COD 131; *R v British*

Broadcasting Corpn, ex p Referendum Party [1997] COD 459, [1997] EMLR 605, DC; *R v Eurotunnel Developments Ltd, ex p Stephens* [1996] COD 151, (1995) 73 P & CR 1 (remedies against Channel Tunnel Group Ltd lay in private not in public law); *R v Panel of the Federation of Communication Services, ex p Kubis* [1998] COD 5; *R v Provincial Court of the Church in Wales, ex p Williams* [1999] COD 163; *R (on the application of Sunspell Ltd) v Association of British Travel Agents* [2000] All ER (D) 1368. The courts have left open the position in relation to the Press Complaints Commission (*R v Advertising Standards Authority, ex p City Trading Ltd* supra) and the British Broadcasting Corporation (*R v British Broadcasting Corpn, ex p Referendum Party* supra). See also *R v Lord Chancellor, ex p Hibbit and Saunders (a firm)* [1993] COD 326, Times, 12 March, DC (decision of Lord Chancellor's department not to award tender for court reporting services to a particular firm was not judicially reviewable since not a decision with a sufficient public law element). See also para 61 post

4 Mandatory orders will not now be granted to enforce a private law duty such as a duty to make restitution of money owing: see *R v Barnet Magistrates' Court, ex p Cantor* [1998] 2 All ER 333, [1999] 1 WLR 334, DC. A mandatory order was formerly known as an order of mandamus: see para 117 note 3 post.

5 See *A-G v Brown* (1818) 1 Swan 265 at 291; *Wellbeloved v Jones* (1822) 1 Sim & St 40 at 43. See also the Charities Act 1993 s 33(6), (7); and **CHARITIES** vol 8 (2010) PARAS 587-588, 593; **TRUSTS** vol 48 (2007 Reissue) paras 630-631.

6 *A-G v PYA Quarries Ltd* [1957] 2 QB 169 at 182, [1957] 1 All ER 894 at 900, CA, per Romer LJ and at 191 and 908, CA, per Denning LJ. For the meaning of 'public purpose' in the context of acquisition of land see *Williams v Government of Island of St Lucia* [1970] AC 935, PC (development of tourism a public purpose). Cf *Showers v Chelmsford Union Assessment Committee* [1891] 1 QB 339, CA. See further *Gouriet v Union of Post Office Workers* [1978] AC 435, [1977] 3 All ER 70, HL; *A-G v Blake* [2000] 4 All ER 385, [2000] 3 WLR 625, HL (Attorney-General's power to sue for injunctive relief in the public interest).

7 See the Human Rights Act 1998 s 6(1), (3)(b), (5); and para 87 post. As to the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) Cmd 8969) see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 122 et seq.

UPDATE

8 Public functions

NOTE 1--See *R (on the application of Oxford Study Centre Ltd) v The British Council* [2001] EWHC 207 (Admin), [2001] ELR 803 (body involved in accreditation of language schools not public body because scheme purely voluntary); and *R (on the application of West) v Lloyd's of London* [2004] EWCA Civ 506, [2004] 3 All ER 251 (Lloyd's of London did not exercise public functions).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/1. INTRODUCTION/ (3) PUBLIC BODIES AND OFFICERS/9. Public office.

9. Public office.

The meanings of 'public office' and 'public officer' vary according to the context in which the terms are used¹. In general, a public officer may be said to be one who discharges a duty in the performance of which the public is interested²; a person is more likely to be such an officer if he is paid out of a fund provided by the public³, but it does not necessarily follow that the fund must belong to the central government⁴. Tenure of a public office is not inconsistent with having the status of employee under a contract of employment⁵; but the occupants of certain public offices, such as that of a police officer, are not regarded as having the status of servants⁶.

1 *Beeston and Stapleford UDC v Smith* [1949] 1 KB 656 at 663, [1949] 1 All ER 394 at 396, DC, per Lord Goddard CJ.

2 The decision in *McMillan v Guest* [1942] AC 561, [1942] 1 All ER 606, HL, that a company director was the holder of a public office for the purpose of assessability to income tax under Schedule E within the meaning of the Income Tax Act 1918 must be confined to its special context. See now the Income and Corporation Taxes Act 1988 s 19 (as amended) (word 'public' omitted) (see **INCOME TAXATION** vol 23(1) (Reissue) para 605 et seq). See also *Graham v White (Inspector of Taxes)* [1972] 1 All ER 1159, [1972] 1 WLR 874 (civil servants hold offices under the Crown 'of a public nature' for the purposes of what is now the Income and Corporation Taxes Act 1988 s 132(4)); and *Caldicott v Varty (Inspector of Taxes)* [1976] 3 All ER 329.

3 *R v Whitaker* [1914] 3 KB 1283 at 1296-1297, CCA, per Lawrence J; *Henly v Lyme Corpn* (1828) 5 Bing 91.

4 In *Re Mirams* [1891] 1 QB 594; *Beeston and Stapleford UDC v Smith* [1949] 1 KB 656 at 663, [1949] 1 All ER 394 at 396, DC, per Lord Goddard CJ (the fact that the officer was not paid out of central funds was decisive, but only for the purpose of the enactments there under consideration). Under the Public Bodies Corrupt Practices Act 1889 s 7, public office includes local office, but excludes central government office: see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 12. The question whether a particular person is or is not a public officer will be significant, for example, if an action is brought against that person on the basis that he or she is liable for the tort of misfeasance in public office: see further *Three Rivers District Council v Governor and the Company of the Bank of England (No 3)* [2000] 3 All ER 1, [2000] 2 WLR 1220, HL; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 12; **TORT** vol 45(2) (Reissue) para 1211.

5 Eg tenure of a post in the civil service: see eg *Kodeeswaran v A-G of Ceylon* [1970] AC 1111, PC. Under the then Constitution of Ceylon (see para 5 note 8 ante) ss 3, 60, a public officer was defined as any person (subject to certain exceptions) who held a paid office other than a judicial office as a Crown servant in respect of the Government of Ceylon; and he was appointable and dismissible only by the Public Service Commission: see *Ranaweera v Ramachandran* [1970] AC 962, PC (members of income tax board of review were not Crown servants or 'public officers' because they were analogous to independent arbitrators); *Suttling v Director General of Education* [1985] 3 NSWLR 427, CA. See further *R v Civil Service Appeal Board, ex p Bruce* [1988] 3 All ER 686, [1988] ICR 649, DC (affd [1989] 2 All ER 907, [1989] ICR 171, CA); *R v Lord Chancellor's Department, ex p Nangle* [1992] 1 All ER 897, [1991] ICR 743, DC (civil servant had contract of employment with the Crown and as such should challenge the fairness of disciplinary procedures by way of a private law action rather than by way of judicial review).

6 For the status of police officers at common law see *Fisher v Oldham Corpn* [1930] 2 KB 364; *Lewis v Cattle* [1938] 2 KB 454, [1938] 2 All ER 368, DC; *A-G for New South Wales v Perpetual Trustee Co Ltd* [1955] AC 457, [1955] 1 All ER 846, PC; *Metropolitan Police District Receiver v Croydon Corpn* [1957] 2 QB 154, [1957] 1 All ER 78, CA; *Ridge v Baldwin* [1964] AC 40, [1963] 2 All ER 66, HL; *R v Metropolitan Police Comr, ex p Blackburn* [1968] 2 QB 118, [1968] 1 All ER 763, CA. Police officers may in certain circumstances challenge by way of judicial review a decision to dismiss them: see *Chief Constable of the North Wales Police v Evans* [1982] 3 All ER 141, [1982] 1 WLR 1155, HL (probationer constable); *R v Chief Constable of the Merseyside Police, ex p Calveley* [1986] QB 424, [1986] 1 All ER 257, CA; *R v Secretary of State for the Home Department, ex p Benwell* [1985] QB 554, [1984] 3 All ER 854; *Calveley v Chief Constable of the Merseyside Police* [1989] 1 All ER 1025 at 1029, [1989] 2 WLR 624 at 629, HL, per Lord Bridge of Harwich. By statute, chief officers of police are made liable for torts committed by constables under their direction and control: see the Police Act 1996 s 88 (as amended); and **POLICE** vol 36(1) (2007 Reissue) para 105. For certain purposes constables are to be treated as employed by the police authority: see the Sex Discrimination Act 1975 s 17 (as amended); the Race Relations Act 1976 s 16 (as amended); and **DISCRIMINATION** vol 13 (2007 Reissue) paras 371, 455.

UPDATE

9 Public office

NOTE 2--1988 Act s 19 (as amended) replaced by provisions of the Income Tax (Earnings and Pensions) Act 2003. For destination of replaced provision, see table, **INCOME TAXATION** vol 23(2) (Reissue) PARA 1900A.

NOTE 6--Race Relations Act 1976 s 16 repealed: Race Relations (Amendment) Act 2000 Sch 3. See now Race Relations Act 1976 ss 76A, 76B; and **DISCRIMINATION** vol 13 (2007 Reissue) PARA 455.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/1. INTRODUCTION/ (3) PUBLIC BODIES AND OFFICERS/10. Tenure of particular offices.

10. Tenure of particular offices.

In general, officers and servants of the Crown¹ hold office during the Crown's pleasure², except where statute otherwise provides³. Crown servants⁴ enjoy a right not to be unfairly dismissed⁵. The right does not extend to office-holders under the Crown but an office-holder may, in certain circumstances, challenge by way of judicial review a decision to dismiss him⁶. Members of the bodies administering public corporations hold office in accordance with the terms of the statute or charter creating or regulating the authority⁷. Employees of these bodies will not be Crown servants unless the body is itself a Crown servant⁸ and their tenure of office will depend on the terms of their contracts of employment⁹. Members of local authorities are removable only on limited grounds prescribed by statute¹⁰. Local government officers normally hold office during the pleasure of the local authority subject to a reasonable period of notice¹¹, but certain officers may be removable only with the concurrence of the responsible minister¹². Special statutory safeguards are provided for securing the tenure of most judicial officers against peremptory termination¹³. It would appear that, in the absence of a contrary intention¹⁴, resignation from an office held under the Crown is ineffective until accepted¹⁵.

1 Under the Crown Proceedings Act 1947, an officer of the Crown includes a minister: see s 38(2); and **CROWN PROCEEDINGS AND CROWN PRACTICE** vol 12(1) (Reissue) para 108. As to Crown liability in respect of wrongful acts and omissions by officers and servants of the Crown see s 2 (as amended); and para 182 post.

2 *Dunn v R* [1896] 1 QB 116, CA. See also *Malloch v Aberdeen Corp* [1971] 2 All ER 1278, [1971] 1 WLR 1578, HL; *R v Lord Chancellor's Department, ex p Nangle* [1992] 1 All ER 897, [1991] ICR 743, DC. In *R v Civil Service Appeal Board, ex p Bruce* [1988] 3 All ER 686, [1988] ICR 649, DC (affd [1989] 2 All ER 907, [1989] ICR 171, CA), the Divisional Court stated that the power to dismiss at will derived from the royal prerogative. The power of the Crown to terminate such service at pleasure is nevertheless consistent with the existence of a contractual relationship prior to its termination: see *Reilly v R* [1934] AC 176, PC; *Kodeeswaran v A-G of Ceylon* [1970] AC 1111, PC; *McClaren v Home Office* [1990] ICR 824, [1990] IRLR 338, CA; *R v Lord Chancellor's Department, ex p Nangle* [1992] 1 All ER 897, [1991] ICR 743, DC. In *Sutton v A-G* (1923) 39 TLR 295, HL, it was assumed that a contractual engagement between the Crown and a Crown servant was legally binding on the Crown. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) paras 387, 902; **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) para 50 et seq.

3 See eg *Gould v Stuart* [1896] AC 575, PC; *Malloch v Aberdeen Corp* [1971] 2 All ER 1278, [1971] 1 WLR 1578, HL; cf *Coutts v Commonwealth of Australia* (1985) 59 ALR 699; *Knight v Indian Head School Division No 19* [1990] 1 SCR 653. Quaere whether non-statutory terms of an engagement, restricting the Crown's power to dismiss at pleasure, are ever enforceable at the suit of the employee: see *Sutton v A-G* (1923) 39 TLR 295, HL; *Reilly v R* [1934] AC 176 at 180, PC; *Riordan v War Office* [1959] 3 All ER 552, [1959] 1 WLR 1046 (affd [1960] 3 All ER 774, [1961] 1 WLR 210, CA).

4 Crown employment is defined for these purposes by the Employment Rights Act 1996 s 191(3): see **EMPLOYMENT** vol 39 (2009) PARA 136. Under the Employment Rights Act 1996, members of the armed forces may be treated as Crown employees for the purposes of a number of provisions contained in that Act: see s 192 (as substituted and amended); and **EMPLOYMENT** vol 39 (2009) PARA 136. The provisions of the Employment Rights Act 1996 do not apply to that Crown employment in respect of which a minister has issued a certificate stating that that employment must be exempt from protection by reason of national security: see s 193 (as amended; prospectively substituted); and **EMPLOYMENT** vol 39 (2009) PARA 136. However, as and when the substitution of s 193 by the Employment Relations Act 1999 s 41 comes into force, substantial amendments will be made to the law on exemptions by reason of national security.

5 See the Employment Rights Act 1996 s 191 (as amended), s 192 (as substituted and amended); and **EMPLOYMENT** vol 39 (2009) PARA 136. However, armed forces personnel cannot rely on the unfair dismissal provisions contained in ss 100-104 (as amended) (see **EMPLOYMENT** vol 40 (2009) PARA 742 et seq) since these provisions do not have effect in respect of such personnel: see s 192(2) (as substituted and amended). Crown employees do not have the right to a minimum period of notice, a statement of terms and conditions of employment or a redundancy payment conferred upon employees: see s 191 (as amended).

6 See *R v Secretary of State for the Home Department, ex p Benwell* [1985] QB 554, [1984] 3 All ER 854; *Chief Constable of the North Wales Police v Evans* [1982] 3 All ER 141, [1982] 1 WLR 1155, HL; *R v Chief*

Constable of the Merseyside Police, ex p Calveley [1986] QB 424, [1986] 1 All ER 257, CA. The following have been held not to be office-holders and so to be unable to challenge dismissal by judicial review: employees of the Post Office (*R v Post Office, ex p Byrne* [1975] ICR 221, DC (suspended dismissal)); senior nursing officers (*R v East Berkshire Health Authority, ex p Walsh* [1985] QB 152, [1984] 3 All ER 425, CA); employees of the British Broadcasting Corporation (*R v British Broadcasting Corp, ex p Lavelle* [1983] 1 All ER 241, [1983] 1 WLR 23); employees of the Crown Prosecution Service (*R v Crown Prosecution Service, ex p Hogg* (1994) 6 Admin LR 778, (1994) Times, 14 April, CA). See also *McClaren v Home Office* [1990] ICR 824 at 836-837, [1990] IRLR 338 at 342, CA, per Lord Woolf. For the grounds upon which an office-holder may obtain judicial review of a decision to dismiss him see para 61 post.

The Sex Discrimination Act 1975 (by s 85 (as amended) (see **DISCRIMINATION** vol 13 (2007 Reissue) paras 359, 375)) and the Race Relations Act 1976 (by s 75 (as amended) (see **DISCRIMINATION** vol 13 (2007 Reissue) paras 445, 457)) apply to protect officers of the Crown (other than persons holding statutory office) as they apply to protect Crown servants: see *Knight v A-G* [1979] ICR 194, EAT; *Department of the Environment v Fox* [1980] 1 All ER 58, [1979] ICR 736, EAT. See also the Sex Discrimination Act 1975 ss 85A, 85B (both as added and amended) (see **DISCRIMINATION** vol 13 (2007 Reissue) para 376) and the Race Relations Act 1976 ss 75A, 75B (both as added and amended) (see **DISCRIMINATION** vol 13 (2007 Reissue) para 458) (application to House of Commons and House of Lords staff).

The court may grant judicial review of a decision of the Civil Service Appeal Board in respect of a civil servant's appeal against his dismissal (though relief may be refused on the basis of the alternative remedy of a claim for unfair dismissal): see *R v Civil Service Appeal Board, ex p Bruce* [1988] 3 All ER 686, [1988] ICR 649, DC; affd [1989] 2 All ER 907, [1989] ICR 171, CA.

7 See eg the Broadcasting Act 1990 s 1, Sch 1 (as amended) (which establishes the Independent Television Commission); and the Broadcasting Act 1996 s 106, Sch 3 (as amended) (which establishes the Broadcasting Standards Commission).

8 See para 3 ante. Typically, a public corporation is given a general power to appoint such employees as it may determine: see eg the powers of the Broadcasting Standards Commission to appoint employees under the Broadcasting Act 1996 s 106, Sch 3 para 10.

9 This is subject to the Sex Discrimination Act 1975, the Race Relations Act 1976, the Employment Rights Act 1996 and to any special statutory provisions: eg under the Post Office Act 1969 Sch 1 para 12 (repealed), employees were dismissible on security grounds only with the minister's approval.

10 See the Local Government Act 1972 ss 80, 81, 85, 86, 92 (all as amended); and **LOCAL GOVERNMENT** vol 69 (2009) PARAS 119, 134, 298, 299, 301.

11 See *ibid* s 112(2); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 425.

12 Eg the former medical officers of health: see the Local Government Act 1933 s 110 (repealed).

13 See eg the Supreme Court Act 1981 s 11 (as amended) (judges of High Court and Court of Appeal hold office during good behaviour subject to removal by the Crown upon an address from both Houses of Parliament) (see **COURTS** vol 10 (Reissue) para 516). All holders of judicial office, if appointed after 1993, are subject to a retirement age of 70: see s 11 (as amended). Judges of the High Court, Court of Appeal and House of Lords appointed before 1993 must retire before they are 75: see the Judicial Pensions and Retirement Act 1993 s 26(11), Sch 7; and **COURTS** vol 10 (Reissue) para 535. As to judicial tenure in Commonwealth countries see **COMMONWEALTH** vol 13 (2009) PARA 836.

14 *Riordan v War Office* [1959] 3 All ER 552, [1959] 1 WLR 1046 (prerogative regulation construed as providing for effectiveness of civil servant's resignation without acceptance); affd [1960] 3 All ER 774, [1961] 1 WLR 210, CA.

15 See *R v Cumming, ex p Hall* (1887) 19 QBD 13, DC; *Hearson v Churchill* [1892] 2 QB 144, CA; *Marks v Commonwealth of Australia* (1964) 111 CLR 549, [1965] ALR 25, Aust HC; *O'Day v Commonwealth of Australia* (1964) 111 CLR 599, [1965] ALR 57, Aust HC. These authorities are concerned with commissioned office in the armed services but tend to support the broader proposition set out in the text. Resignation from employment with a private employer must similarly be accepted to be effective: see *Evening Standard Co Ltd v Henderson* [1987] ICR 588, [1987] IRLR 64, CA.

UPDATE

10 Tenure of particular offices

NOTES 7, 8--Broadcasting Act 1990 s 1, Sch 1 and Broadcasting Act 1996 s 106, Sch 3 repealed: Communications Act 2003 s 406(7), Sch 19(1).

NOTE 13--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/1. INTRODUCTION/ (3) PUBLIC BODIES AND OFFICERS/11. Obligation to serve.

11. Obligation to serve.

It seems that at common law¹ any person appointed or elected to a public office, the duties of which had to be performed in person, was under a legal obligation to serve², and refusal to serve was a common misdemeanour³. This obligation, apart from service in the armed forces, is now restricted to the office of sheriff⁴. No member of the House of Commons or any parliamentary candidate can be required to accept a public office (other than in the armed forces) which will disqualify him for membership of that House⁵.

1 The ambit of the obligation might be limited by statute: *Donne v Martyr* (1828) 8 B & C 62.

2 *R v Bower* (1823) 1 B & C 585 at 587; *Marks v Commonwealth of Australia* (1964) 111 CLR 549 at 557, 561, [1965] ALR 25 at 27, 30, Aust HC.

3 *R v Poynder* (1823) 1 B & C 178.

4 *R v Patteson* (1832) 4 B & Ad 9 at 23-24. The elective office of parish constable now appears to be obsolete: see the Parish Constables Act 1842; the Parish Constables Act 1850; the Police Act 1964 s 64(3), Sch 10 Pt I; and the Statute Law Revision Act 1966 s 1, Schedule (all repealed). See **POLICE** vol 36(1) (2007 Reissue) para 101.

5 See the House of Commons Disqualification Act 1975 s 8; and **PARLIAMENT** vol 78 (2010) PARA 908.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/1. INTRODUCTION/ (3) PUBLIC BODIES AND OFFICERS/12. Right to compensation.

12. Right to compensation.

At common law no public officer has any right to compensation for the abolition of his office; but, when a public office is abolished by statute or, as a consequence of reforms, diminution in emoluments may be suffered, the legislature provides for appropriate compensation¹. In such cases the extent of the right and the person entitled to it must be ascertained from the particular statute and any regulations made under it².

1 For a consideration of the legislative provisions as to compensation for transfer or on abolition of office in relation to local government officers see generally **LOCAL GOVERNMENT** vol 69 (2009) PARA 17.

2 See eg the Police Act 1996 s 100 (see **POLICE** vol 36(1) (2007 Reissue) PARA 178); and the Local Government Act 1985 s 53 (as amended) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 17).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/1. INTRODUCTION/(4) STATUTORY TRIBUNALS AND PUBLIC INQUIRIES/(i) Statutory Tribunals/13. Generally.

(4) STATUTORY TRIBUNALS AND PUBLIC INQUIRIES

(i) Statutory Tribunals

13. Generally.

Numerous special tribunals have been created for special purposes. Examples are agricultural land tribunals¹, employment tribunals², the Immigration Appeal Tribunal³, mental health review tribunals⁴, rent tribunals⁵, and the Transport Tribunal⁶. There are many others to which a full treatment of their scope and jurisdiction is accorded elsewhere in this work under the titles appropriate to the subject matter in question⁷. The Tribunals and Inquiries Act 1992 lists a number of statutory tribunals which come under the general supervision of the Council on Tribunals⁸; and that council is empowered to consider and report on such particular matters as may be referred to it under the Act with respect to tribunals other than the ordinary courts of law, whether or not specified in that list⁹.

Tribunals of inquiry established under the Tribunals of Inquiry (Evidence) Act 1921 are an example of statutory tribunals which fall outside the general supervision of the Council on Tribunals¹⁰. Where it has been resolved by both Houses of Parliament that it is expedient that a tribunal be established to inquire into a matter of urgent public importance and a tribunal is appointed for the purpose either by Her Majesty or by a Secretary of State¹¹, the instrument by which the tribunal is appointed, or any instrument supplemental to it, may provide that the Tribunals of Inquiry (Evidence) Act 1921 is to apply¹².

Other statutory tribunals falling outside the general supervision of the Council on Tribunals include bodies which exercise disciplinary functions in respect of certain professions¹³.

Various private bodies have set up their own domestic tribunals for administrative purposes, and for settling disputes between or exercising disciplinary control over their members. The jurisdiction of such tribunals is based on contract and limited by rules or regulations which comprise part of the terms of the contract between the particular body and its members¹⁴. Judicial control of such tribunals raises problems similar to those in relation to judicial control of administrative tribunals, especially in respect of the observance of the rules of natural justice¹⁵.

1 See **AGRICULTURAL LAND** vol 1 (2008) PARA 670 et seq.

2 See **EMPLOYMENT** vol 41 (2009) PARA 1363 et seq.

3 See **BRITISH NATIONALITY AND IMMIGRATION** vol 4(2) (2002 Reissue) para 173 et seq.

4 See **MENTAL HEALTH** vol 30(2) (Reissue) para 560 et seq.

5 See **LANDLORD AND TENANT** vol 27(2) (2006 Reissue) para 988 et seq.

6 See **ROAD TRAFFIC** vol 40(1) (2007 Reissue) para 253 et seq.

7 See generally the *Report of the Committee on Ministers' Powers* (Cmd 4060); the *Report of the Committee on Administrative Tribunals and Enquiries* (Cmd 218) (1957). The law of contempt does not apply to 'administrative' tribunals: see *A-G v British Broadcasting Corp* [1981] AC 303, [1980] 3 All ER 161, HL; and **CONTEMPT OF COURT** vol 9(1) (Reissue) para 454.

8 See the Tribunals and Inquiries Act 1992 s 1(1)(a), Sch 1 (as amended); and para 57 post.

9 See *ibid* s 1(1)(b); and para 15 post.

10 Such tribunals of inquiry have included in the past a tribunal to consider improper gifts to ministers (see the *Report of the Tribunal appointed to inquire into Allegations reflecting on the Official Conduct of Ministers of the Crown and other Public Servants* (Cmd 7616) (1949)); a tribunal to consider accusations of brutality against the police (see *Report of the Tribunal appointed to inquire into the allegation of Assault on John Waters* (Cmd 718) (1959)); and a tribunal to consider disorders in Northern Ireland (see the *Inquiry into Disorders in Northern Ireland ('Bloody Sunday')* (Cmd 566) (NI) (April 1972)). Inquiries with similar purposes may be held under other legislation, for example, the inquiry into the investigation of the racially motivated murder of Stephen Lawrence was held under the Police Act 1996 s 9 (as amended) (see **POLICE** vol 36(1) (2007 Reissue) para 164) (see the *Stephen Lawrence Inquiry* (Cm 4262) (1997)).

11 In law 'Secretary of State' means one of Her Majesty's Principal Secretaries of State: see the Interpretation Act 1978 s 5, Sch 1. Accordingly, many modern statutes refer simply to 'the Secretary of State' without reference to a particular department or ministry. As to the office of Secretary of State see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 355.

12 See the Tribunals of Inquiry (Evidence) Act 1921 s 1(1) (amended by the Statute Law (Repeals) Act 1995); and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 960. Examples of reports of tribunals of inquiry are the *Report of the Tribunal appointed to inquire into the Disaster at Aberfan on 21 October 1966* (HL Paper (1966-67) no 316, HC Paper (1966-67) no 553); the *Report of the Tribunal appointed to inquire into certain issues in relation to the circumstances leading up to the cessation of trading by the Vehicle and General Insurance Company Limited* (HL Paper (1971-72) no 80, HC Paper (1971-72) no 133). See generally the *Report of the Royal Commission on Tribunals of Inquiry* (Cmd 3121) (1966); the *Report of the Interdepartmental Committee on the Law of Contempt as it affects Tribunals of Inquiry* (Cmd 4078) (1969).

13 Eg the General Medical Council (see **MEDICAL PROFESSIONS** vol 30(1) (Reissue) para 13), the Council of the Royal College of Veterinary Surgeons (see **ANIMALS** vol 2 (2008) PARA 1147 et seq) and the Solicitors Disciplinary Tribunal (see **LEGAL PROFESSIONS** vol 65 (2008) PARA 629 et seq). See also *R v General Medical Council, ex p Gee* [1987] 1 All ER 1204 at 1218, [1986] 1 WLR 1247 at 1252, CA; affd sub nom *Gee v General Medical Council* [1987] 2 All ER 193, [1987] 1 WLR 564, HL. Following the coming into force of the Human Rights Act 1998 s 6 on 2 October 2000 (see para 87 post), all statutory tribunals have a statutory obligation to comply with (inter alia) the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) Cmd 8969) art 6(1) (right to a fair trial) (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 134 et seq) as and when they are determining civil rights and obligations.

14 *Lee v Showmen's Guild of Great Britain* [1952] 2 QB 329 at 341, [1952] 1 All ER 1175 at 1180, CA, per Denning LJ, and at 347 and 1184 per Romer LJ; *Maclean v Workers' Union* [1929] 1 Ch 602 at 629 per Maugham J. See generally *Russell v Duke of Norfolk* [1949] 1 All ER 109, CA; *Abbott v Sullivan* [1952] 1 KB 189, [1952] 1 All ER 226, CA; *Byrne v Kinematograph Renters Society Ltd* [1958] 2 All ER 579, [1958] 1 WLR 762. As to whether judicial review is the appropriate procedure to challenge the decisions of private domestic tribunals see para 62 post; and *R v Panel on Take-overs and Mergers, ex p Datafin plc* [1987] QB 815, [1987] 1 All ER 564, CA; *R v Fernhill Manor School, ex p A* [1993] 1 FLR 620, sub nom *R v Fernhill Manor School, ex p B* [1994] 1 FCR 146; *R v Disciplinary Committee of the Jockey Club, ex p Aga Khan* [1993] 2 All ER 853, [1993] 1 WLR 909, CA; *R v Jockey Club, ex p RAM Racecourses Ltd* [1993] 2 All ER 225, [1990] COD 346, DC; *R v Football Association Ltd, ex p Football League Ltd* [1993] 2 All ER 833, [1992] COD 52; *R v Lloyd's of London, ex p Briggs* [1993] 1 Lloyd's Rep 176, [1993] COD 66, DC; *R v Panel of the Federation of Communication Services Ltd, ex p Kubis* [1998] COD 5; *R v London Beth Din, ex p Bloom* [1998] COD 131.

15 As to judicial control see para 74 et seq post. Although the activities of domestic tribunals are not amenable at the procedural level to judicial review, it is still possible that such bodies may be required to observe substantive principles of public law such as natural justice or reasonableness. See *Edwards v Society of Graphical and Allied Trades* [1971] Ch 354, [1970] 3 All ER 689, CA (trade union could not expel a member without a hearing); *Wright v Jockey Club* (1995) Times, 16 June; *Jones v Welsh Rugby Football Union* (1997) Times, 6 March (interlocutory injunction to restrain suspension of rugby on the basis of suspected breach of natural justice) (injunction discharged on other grounds: see (1998) Times, 6 January, CA); *Korda v ITF Ltd (t/a International Tennis Federation)* (1999) Times, 4 February, (1999) Independent, 8 February (declaration granted that the ITF was not entitled under its rules to appeal to the Court of Arbitration for Sport against the decision of the ITF anti-doping appeals committee) (revsd on merits: see (1999) Independent, 21 April, CA). It is not clear whether, pursuant to the coming into force of the Human Rights Act 1998 (see para 87 post), a domestic tribunal which is the product, for example, of private contractual arrangements is obliged to comply with the requirements of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 6(1) (see note 13 supra). See also *R v British Broadcasting Corp, ex p Lavelle* [1983] 1 All ER 241, [1983] 1 WLR 23; *McClaren v Home Office* [1990] ICR 824, [1990] IRLR 338, CA.

UPDATE

13-15 Statutory Tribunals and Public Inquiries

The Tribunals, Courts and Enforcement Act 2007 Pt 1 (ss 1-49) creates a new, simplified statutory framework for tribunals. It provides a new unified structure by creating two new tribunals, the First-tier Tribunal and the Upper Tribunal: see Pt 1 Ch 2 (ss 3-29); and PARA 13A. The Lord Chancellor has power to transfer the jurisdiction of existing tribunals to the two new tribunals: see Pt 1 Ch 3 (ss 30-38); and PARA 13B. As to administrative matters in respect of certain tribunals see PARA 13C; and as to supplementary provision see PARA 13D.

The Council on Tribunals and the Scottish Committee of the Council on Tribunals are abolished and replaced by the Administrative Justice and Tribunals Council: see ss 44, 45, Sch 7; and PARA 57A.

13 Generally

TEXT AND NOTES 10-12--1921 Act repealed: Inquiries Act 2005 s 49, Sch 3.

NOTE 14--See also *R (on the application of West) v Lloyd's of London* [2004] EWCA Civ 506, [2004] 3 All ER 251.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/1. INTRODUCTION/(4) STATUTORY TRIBUNALS AND PUBLIC INQUIRIES/(i) Statutory Tribunals/13A. First-tier Tribunal and Upper Tribunal.

13A. First-tier Tribunal and Upper Tribunal.

1. Establishment

There is to be a tribunal, known as the First-tier Tribunal, for the purpose of exercising the functions conferred on it under or by virtue of the Tribunals, Courts and Enforcement Act 2007 or any other Act¹. There is to be a tribunal, known as the Upper Tribunal, for the purpose of exercising the functions conferred on it under or by virtue of the Tribunals, Courts and Enforcement Act 2007 or any other Act². Each of the First-tier Tribunal, and the Upper Tribunal, is to consist of its judges and other members³. The Senior President of Tribunals⁴ is to preside over both of the First-tier Tribunal and the Upper Tribunal⁵. The Upper Tribunal is to be a superior court of record⁶.

1 Tribunals, Courts and Enforcement Act 2007 s 3(1).

2 Tribunals, Courts and Enforcement Act 2007 s 3(2).

3 Tribunals, Courts and Enforcement Act 2007 s 3(3).

4 See COURTS vol 10 (Reissue) PARA 530E.

5 Tribunals, Courts and Enforcement Act 2007 s 3(4).

6 Tribunals, Courts and Enforcement Act 2007 s 3(5). Section 3(5) cannot be construed as excluding the judicial review jurisdiction from the Upper Tribunal, whatever the historic scope of the expression 'superior court of record': *R (on the application of Cart) v The Upper Tribunal*; *U v Special Immigration Appeals Commission*; *XC v Special Immigration Appeals Commission* [2009] EWHC 3052 (Admin), [2009] All ER (D) 22 (Dec), DC.

2. Judges and other members of the First-tier Tribunal

A person is a judge of the First-tier Tribunal if the person is (1) appointed by the Lord Chancellor¹; (2) a transferred-in judge of the First-tier Tribunal²; (3) a judge of the Upper Tribunal³; (4) a member of the Asylum and Immigration Tribunal⁴ and is not a judge of the Upper Tribunal⁵; or (5) a member of a panel of chairmen of employment tribunals⁶. A person is one of the other members of the First-tier Tribunal if the person is (a) appointed by the Lord Chancellor⁷; (b) a transferred-in other member of the First-tier Tribunal⁸; (c) one of the other members of the Upper Tribunal⁹; or (d) a member of a panel of members of employment tribunals that is not a panel of chairmen of employment tribunals¹⁰.

1 Ie under the Tribunals, Courts and Enforcement Act 2007 Sch 2 para 1(1): s 4(1)(a), (4). As to eligibility for appointment, see Sch 2 para 1(2), (3); and COURTS vol 10 (Reissue) PARA 530F. Schedule 2 makes provision in relation to (1) removal from office; (2) terms of appointment; (3) remuneration, allowances and expenses; (4) training; and (5) oaths.

2 Tribunals, Courts and Enforcement Act 2007 s 4(1)(b). See s 31(2); and PARA 13B.2.

3 Tribunals, Courts and Enforcement Act 2007 s 4(1)(c). See PARA 13A.3.

4 Ie appointed under the Nationality, Immigration and Asylum Act 2002 Sch 4 para 2(1)(a)-(d).

5 Tribunals, Courts and Enforcement Act 2007 s 4(1)(d).

6 Tribunals, Courts and Enforcement Act 2007 s 4(1)(e).

7 Ie under the Tribunals, Courts and Enforcement Act 2007 Sch 2 para 2(1): s 4(3)(a), (4). As to eligibility for appointment, see Sch 2 para 2(2). Schedule 2 makes provision in relation to (1) removal from office; (2) terms of appointment; (3) remuneration, allowances and expenses; (4) training; and (5) oaths. See also the Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008, SI 2008/2692 (amended by SI 2009/1592).

8 Tribunals, Courts and Enforcement Act 2007 s 4(3)(b). See s 31(2); and PARA 13B.2.

9 Tribunals, Courts and Enforcement Act 2007 s 4(3)(c). See PARA 13A.3.

10 Tribunals, Courts and Enforcement Act 2007 s 4(3)(d).

3. Judges and other members of the Upper Tribunal

A person is a judge of the First-tier Tribunal if the person (1) is the Senior President of Tribunals¹; (2) is appointed by Her Majesty, on the recommendation of the Lord Chancellor²; (3) is a transferred-in judge of the Upper Tribunal³; (4) is a member of the Asylum and Immigration Tribunal⁴ who (a) is the President or a Deputy President of that tribunal, or (b) has the title Senior Immigration Judge but is neither the President nor a Deputy President of that tribunal⁵; (5) is the Chief Social Security Commissioner, or another Social Security Commissioner⁶; (6) holds a specified judicial office⁷; (7) is a deputy judge of the Upper Tribunal⁸; (8) is a Chamber President or a Deputy Chamber President, whether of a chamber of the Upper Tribunal or of a chamber of the First-tier Tribunal, and does not fall within any of heads (1) to (7)⁹. A person is one of the other members of the Upper Tribunal if the person (a) is appointed by the Lord Chancellor¹⁰; (b) is a transferred-in other member of the Upper Tribunal¹¹; (c) is a member of the Employment Appeal Tribunal¹²; (d) is a member of the Asylum and Immigration Tribunal¹³.

1 Tribunals, Courts and Enforcement Act 2007 s 5(1)(a). As the Senior President of Tribunals see COURTS vol 10 (Reissue) PARA 530E.

2 le under the Tribunals, Courts and Enforcement Act 2007 Sch 3 para 1(1): s 5(1)(b), (3). As to eligibility for appointment, see Sch 3 para 2(2). Schedule 2 makes provision in relation to (1) removal from office; (2) terms of appointment; (3) remuneration, allowances and expenses; (4) training; and (5) oaths.

3 Tribunals, Courts and Enforcement Act 2007 s 5(1)(c). See s 31(2); and PARA 13B.2.

4 le appointed under the Nationality, Immigration and Asylum Act 2002 Sch 4 para 2(1)(a)-(d).

5 Tribunals, Courts and Enforcement Act 2007 s 5(1)(d).

6 le Chief Social Security Commissioner, or any other Social Security Commissioner appointed under the Social Security Administration (Northern Ireland) Act 1992 s 50(1), or a Social Security Commissioner appointed under s 50(2): Tribunals, Courts and Enforcement Act 2007 s 5(1)(e), (f).

7 Tribunals, Courts and Enforcement Act 2007 s 5(1)(g). A person holds a specified judicial offices if the person is (1) an ordinary judge of the Court of Appeal in England and Wales (including the vice-president, if any, of either division of that Court); (2) a Lord Justice of Appeal in Northern Ireland; (3) a judge of the Court of Session; (4) a puisne judge of the High Court in England and Wales or Northern Ireland; (5) a circuit judge; (6) a sheriff in Scotland; (7) a county court judge in Northern Ireland; (8) a district judge in England and Wales or Northern Ireland; or (9) a District Judge (Magistrates' Courts): s 6(1). References in heads (3) to (9) to office-holders do not include deputies or temporary office-holders: s 6(2). See generally **COURTS**.

8 Tribunals, Courts and Enforcement Act 2007 s 5(1)(h). See further Sch 3 para 7.

9 Tribunals, Courts and Enforcement Act 2007 s 5(1)(i).

10 le under the Tribunals, Courts and Enforcement Act 2007 Sch 3 para 2(1): s 5(2)(a), (3). As to eligibility for appointment, see Sch 3 para 2(2). Schedule 2 makes provision in relation to (1) removal from office; (2) terms of appointment; (3) remuneration, allowances and expenses; (4) training; and (5) oaths. See also the Qualifications for Appointment of Members to the First-tier Tribunal and Upper Tribunal Order 2008, SI 2008/2692 (amended by SI 2009/1592).

11 Tribunals, Courts and Enforcement Act 2007 s 5(2)(b). See s 31(2); and PARA 13B.2.

12 le appointed under the Employment Tribunals Act 1996 s 22(1)(c): Tribunals, Courts and Enforcement Act 2007 s 5(2)(c).

13 le appointed under the Nationality, Immigration and Asylum Act 2002 Sch 4 para 2(1)(e): Tribunals, Courts and Enforcement Act 2007 s 5(2)(d).

4. Chambers: jurisdiction and Presidents

The Lord Chancellor may, with the concurrence of the Senior President of Tribunals¹, by order make provision for the organisation of each of the First-tier Tribunal and the Upper Tribunal into a number of chambers². There is (1) for each chamber of the First-tier Tribunal, and (2) for each chamber of the Upper Tribunal, to be a person, or two persons, to preside over that chamber³. A person may not at any particular time preside over more than one chamber of the First-tier Tribunal and may not at any particular time preside over more than one chamber of the Upper Tribunal (but may at the same time preside over one chamber of the First-tier Tribunal and over one chamber of the Upper Tribunal)⁴. A person appointed under these provisions to preside over a chamber is to be known as a Chamber President⁵. Where two persons are appointed under these provisions to preside over the same chamber, any reference in an enactment to the Chamber President of the chamber is a reference to a person appointed under these provisions to preside over the chamber⁶. The Senior President of Tribunals may⁷ appoint a person who is the Chamber President of a chamber to preside instead, or to preside also, over another chamber⁸. The Lord Chancellor may⁹ appoint a person who is not a Chamber President to preside over a chamber¹⁰. Each of the Lord Chancellor and the Senior President of Tribunals may, with the concurrence of the other, by order (a) make provision for the allocation of the First-tier Tribunal's functions between its chambers; (b) make provision for the allocation of the Upper Tribunal's functions between its chambers; (c) amend or revoke any order so made¹¹.

Provision is made as to eligibility for appointment as Chamber President, terms of appointment, remuneration, allowances and expenses, delegation of functions, appointment of Deputy Chamber Presidents and Acting Chamber Presidents, oaths¹². The Senior President of Tribunals has the function of assigning judges and other members of the First-tier Tribunal and Upper Tribunal to their chambers, must make provision for determining the number of members who are to decide matters falling to be decided by either tribunal¹³.

The First-tier Tribunal is organised into (i) the Social Entitlement Chamber¹⁴; (ii) the War Pensions and Armed Forces Compensation Chamber¹⁵; (iii) the Health, Education and Social Care Chamber¹⁶; (iv) the Tax Chamber¹⁷; and (v) the General Regulatory Chamber¹⁸. The Upper Tribunal is organised into (A) the Administrative Appeals Chamber¹⁹; (B) the Tax and Chancery Chamber²⁰; and (C) the Lands Chamber²¹. If there is any doubt or dispute as to the chamber in which a particular matter is to be dealt with, the Senior President of Tribunals may allocate that matter to the chamber which appears to the Senior President of Tribunals to be most appropriate²².

1 See COURTS vol 10 (Reissue) PARA 530E.

2 Tribunals, Courts and Enforcement Act 2007 s 7(1). As to orders under Pt 1 (ss 1-49) generally see s 49.

3 Tribunals, Courts and Enforcement Act 2007 s 7(2).

4 Tribunals, Courts and Enforcement Act 2007 s 7(3).

5 Tribunals, Courts and Enforcement Act 2007 s 7(4).

6 Tribunals, Courts and Enforcement Act 2007 s 7(5).

7 Ie consistently with the Tribunals, Courts and Enforcement Act 2007 s 7(2), (3).

8 Tribunals, Courts and Enforcement Act 2007 s 7(6).

9 Ie consistently with Tribunals, Courts and Enforcement Act 2007 s 7(2), (3).

10 Tribunals, Courts and Enforcement Act 2007 s 7(7).

11 Ie any order made under the Tribunals, Courts and Enforcement Act 2007 s 7(9): s 7(9).

12 See the Tribunals, Courts and Enforcement Act 2007 s 7(8), Sch 4 Pt 1.

13 See the Tribunals, Courts and Enforcement Act 2007 s 7(8), Sch 4 Pt 2. See further the First-tier Tribunal and Upper Tribunal (Composition of Tribunal) Order 2008, SI 2008/2835. The Lord Chancellor's functions under the Tribunals, Courts and Enforcement Act 2007 Pt 1 (ss 1-49) are protected functions: see the Constitutional Reform Act 2005 s 19, Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 489A.

14 First-tier Tribunal and Upper Tribunal (Chambers) Order 2008, SI 2008/2684, art 2(a). As to the functions of the Social Entitlement Chamber, see art 3 (amended by SI 2009/196, SI 2009/1021, SI 2009/1590).

15 First-tier Tribunal and Upper Tribunal (Chambers) Order 2008, SI 2008/2684, art 2(b). As to the functions of the War Pensions and Armed Forces Compensation Chamber, see art 4.

16 First-tier Tribunal and Upper Tribunal (Chambers) Order 2008, SI 2008/2684, art 2(c). As to the functions of the Health, Education and Social Care Chamber, see art 5.

17 First-tier Tribunal and Upper Tribunal (Chambers) Order 2008, SI 2008/2684, art 2(d) (added by SI 2009/196). As to the functions of the Tax Chamber, see SI 2008/2684 art 5A (added by SI 2009/196).

18 First-tier Tribunal and Upper Tribunal (Chambers) Order 2008, SI 2008/2684, art 2(e) (added by SI 2009/1590). As to the functions of the General Regulatory Chamber, see SI 2008/2684 art 5B (added by SI 2009/1590).

19 First-tier Tribunal and Upper Tribunal (Chambers) Order 2008, SI 2008/2684, art 6(a) (art 6 substituted by SI 2009/196). As to the functions of the Administrative Appeals Chamber, see SI 2008/2684 art 7 (amended by SI 2009/196, SI 2009/1590).

20 First-tier Tribunal and Upper Tribunal (Chambers) Order 2008, SI 2008/2684, art 6(b) (substituted by SI 2009/1590). As to the functions of the Tax and Chancery Chamber, see SI 2008/2684 art 8 (added by SI 2009/196, substituted by SI 2009/1590).

21 First-tier Tribunal and Upper Tribunal (Chambers) Order 2008, SI 2008/2684, art 6(c) (added by SI 2009/1021). As to the functions of the Finance and Tax Chamber, see art 9 (added by SI 2009/1021).

22 First-tier Tribunal and Upper Tribunal (Chambers) Order 2008, SI 2008/2684, art 10 (added by SI 2009/1021).

5. Senior President of Tribunals: power to delegate

The Senior President of Tribunals¹ may delegate any function he has in his capacity as Senior President of Tribunals to any judge, or other member, of the Upper Tribunal or First-tier Tribunal², or to staff³. Any such delegation that is in force immediately before a person ceases to be Senior President of Tribunals continues in force until varied or revoked by a subsequent holder of the office of Senior President of Tribunals⁴.

1 As the Senior President of Tribunals see COURTS vol 10 (Reissue) PARA 530E.

2 Tribunals, Courts and Enforcement Act 2007 s 8(1)(a).

3 The staff appointed under the Tribunals, Courts and Enforcement Act 2007 s 40(1) (see PARA 13C.2): s 8(1) (b). Section 8(1) does not apply to functions of the Senior President of Tribunals under s 7(9) (see PARA 13A.4): s 8(2). A delegation under s 8(1) is not revoked by the delegator's becoming incapacitated: s 8(3). The delegation under s 8 of a function does not prevent the exercise of the function by the Senior President of Tribunals: s 8(5).

4 Tribunals, Courts and Enforcement Act 2007 s 8(4).

6. Review of decisions

The First-tier Tribunal or Upper Tribunal may review a decision made by it on a matter in a case¹, either of its own initiative or on application by a person who has a right of appeal in respect of the decision². Where the First-tier Tribunal or Upper Tribunal has reviewed a decision, it may in the light of the review correct accidental errors in the decision or in a record of the decision, amend reasons given for the decision, or set the decision aside³.

1 Tribunals, Courts and Enforcement Act 2007 ss 9(1), 10(1). However, the First-tier Tribunal may not review a decision that is an excluded decision for the purposes of s 11(1) (see PARA 13A.7): s 9(1). Likewise, the Upper Tribunal may not review a decision that is an excluded decision for the purposes of s 13(1) (see PARA 13A.8): s 10(1). A decision of the First-tier Tribunal or the Upper Tribunal may not be so reviewed more than once: ss 9(10), 10(8).

2 Tribunals, Courts and Enforcement Act 2007 ss 9(2), 10(2). However, Tribunal Procedure Rules (see PARA 13A.10) may contain certain provisions restricting the First-tier Tribunal's or the Upper Tribunal's power of review: see ss 9(3), 10(3).

3 Tribunals, Courts and Enforcement Act 2007 ss 9(4), 10(4). Where the First-tier Tribunal sets a decision aside, it must either re-decide the matter concerned, or refer that matter to the Upper Tribunal (in which case the Upper Tribunal must re-decide the matter): see s 9(5)-(9), (11). Where the Upper Tribunal sets a decision aside, it must re-decide the matter concerned: see s 10(5)-(7), (9).

7. Right to appeal to Upper Tribunal

Any party to a case has a right of appeal¹ to the Upper Tribunal on any point of law arising from a decision made by the First-tier Tribunal, other than an excluded decision². However, that right

may be exercised only with permission³, which may be given by the First-tier Tribunal or the Upper Tribunal, on an application by the party⁴.

If the Upper Tribunal, in deciding such an appeal, finds that the making of the decision concerned involved the making of an error on a point of law⁵, it may (but need not) set aside the decision of the First-tier Tribunal⁶ and, if it does, must either (1) remit the case to the First-tier Tribunal with directions for its reconsideration⁷, or (2) re-make the decision⁸.

1 Tribunals, Courts and Enforcement Act 2007 s 11(2). However, the Lord Chancellor may by order make provision for a person to be treated as being, or to be treated as not being, a party to a case for the purposes of s 11(2): s 11(8).

As to orders under the Tribunals, Courts and Enforcement Act 2007 Pt 1 (ss 1-49) generally see s 49. The Lord Chancellor's functions under Pt 1 are protected functions: see the Constitutional Reform Act 2005 s 19, Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 489A.

2 Tribunals, Courts and Enforcement Act 2007 s 11(1). An 'excluded decision' is (1) any decision of the First-tier Tribunal on an appeal made in exercise of a right conferred by the Criminal Injuries Compensation Scheme in compliance with the Criminal Injuries Compensation Act 1995 s 5(1)(a) (appeals against decisions on reviews), (2) any decision of the First-tier Tribunal on an appeal under the Data Protection Act 1998 s 28(4) or (6) (appeals against national security certificate), (3) any decision of the First-tier Tribunal on an appeal under the Freedom of Information Act 2000 s 60(1) or (4) (appeals against national security certificate), (4) a decision of the First-tier Tribunal under the Tribunals, Courts and Enforcement Act 2007 s 9 (see PARA 13A.6) (a) to review, or not to review, an earlier decision of the tribunal, (b) to take no action, or not to take any particular action, in the light of a review of an earlier decision of the tribunal, (c) to set aside an earlier decision of the tribunal, or (d) to refer, or not to refer, a matter to the Upper Tribunal, (5) a decision of the First-tier Tribunal that is set aside under s 9 (including a decision set aside after proceedings on an appeal under s 11 have been begun), or (6) any decision of the First-tier Tribunal that is of a description specified in an order made by the Lord Chancellor: s 11(5). A description may be specified under head (6) above only if (i) in the case of a decision of that description, there is a right to appeal to a court, the Upper Tribunal or any other tribunal from the decision and that right is, or includes, something other than a right (however expressed) to appeal on any point of law arising from the decision, or (ii) decisions of that description are made in carrying out a function transferred under s 30 (see PARA 13B.1) and prior to the transfer of the function under s 30(1) there was no right to appeal from decisions of that description: s 11(6). Where (A) an order under head (6) above specifies a description of decisions, and (B) decisions of that description are made in carrying out a function transferred under s 30, the order must be framed so as to come into force no later than the time when the transfer under s 30 of the function takes effect (but power to revoke the order continues to be exercisable after that time, and power to amend the order continues to be exercisable after that time for the purpose of narrowing the description for the time being specified): s 11(7).

The Lord Chancellor has specified the following decisions as excluded decisions under head (6) above: (aa) any decision under the Taxes Management Act 1970 s 20(7), (8B) or (8G)(b), 20B(1B) or (6) or 20BB(2)(a); (bb) any decision under the Inheritance Tax Act 1984 s 35A(2), 79A(2) or 219(1A); (cc) any decision under the Income and Corporation Taxes Act 1988 s 152(5) or 215(7); (dd) any decision under the Taxation of Chargeable Gains Act 1992 s 138(4); (ee) any decision under the Finance Act 1993 s 187(5) or (6), or Sch 21 para 3(2) or 6(2); (ff) a decision under the Immigration and Asylum Act 1999 s 103; (gg) any decision under the Finance Act 2000 Sch 15 para 91(5); (hh) any decision under the Finance Act 2002 Sch 29 para 88(5); (ii) any decision under the Finance Act 2003 Sch 13 para 2, 4, 7, 9, 10, 11 or 24; (jj) any decision under the Finance Act 2004 s 306A, 308A, 313B or 314A; (kk) any decision under the Income Tax Act 2007 s 697(4); (ll) any decision under the Venture Capital Trust (Winding up and Mergers) (Tax) Regulations 2004, SI 2004/2199, reg 10(3); (mm) any decision under the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2007, SI 2007/785, reg 5A, 7A, 12B or 12C: Appeals (Excluded Decisions) Order 2009, SI 2009/275.

3 Tribunals, Courts and Enforcement Act 2007 s 11(3).

4 Tribunals, Courts and Enforcement Act 2007 s 11(4).

5 Tribunals, Courts and Enforcement Act 2007 s 12(1).

6 Tribunals, Courts and Enforcement Act 2007 s 12(2)(a).

7 Tribunals, Courts and Enforcement Act 2007 s 12(2)(b)(i). In acting under s 12(2)(b)(i), the Upper Tribunal may also (1) direct that the members of the First-tier Tribunal who are chosen to reconsider the case are not to be the same as those who made the decision that has been set aside; (2) give procedural directions in connection with the reconsideration of the case by the First-tier Tribunal: s 12(3). See *Goldman Sachs International v Revenue and Customs Comrs; Goldman Sachs Services Ltd v Revenue and Customs Comrs* [2009] UKUT 290 (TCC), [2010] STC 763 (error of law undermined decision made by judge in First-tier Tribunal).

8 Tribunals, Courts and Enforcement Act 2007 s 12(2)(b)(ii). In acting under s 12(2)(b)(ii), the Upper Tribunal (1) may make any decision which the First-tier Tribunal could make if the First-tier Tribunal were re-making the decision; and (2) may make such findings of fact as it considers appropriate: s 12(4).

8. Right to appeal to Court of Appeal

Any party to a case has a right of appeal¹ to the Court of Appeal on any point of law arising from a decision made by the Upper Tribunal, other than an excluded decision². However, that right may be exercised only with permission³, which may be given by the Upper Tribunal or the Court of Appeal, on an application by the party⁴.

If the Court of Appeal, in deciding such an appeal, finds that the making of the decision concerned involved the making of an error on a point of law⁵, it may (but need not) set aside the decision of the Upper Tribunal⁶ and, if it does, must either (1) remit the case to the Upper Tribunal or, where the decision of the Upper Tribunal was on an appeal or reference from another tribunal or some other person, to the Upper Tribunal or that other tribunal or person, with directions for its reconsideration⁷, or (2) re-make the decision⁸.

1 Tribunals, Courts and Enforcement Act 2007 s 13(2). However, the Lord Chancellor may by order make provision for a person to be treated as being, or to be treated as not being, a party to a case for the purposes of s 13(2): s 13(14).

As to orders under the Tribunals, Courts and Enforcement Act 2007 Pt 1 (ss 1-49) generally see s 49. The Lord Chancellor's functions under Pt 1 are protected functions: see the Constitutional Reform Act 2005 s 19, Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 489A.

2 Tribunals, Courts and Enforcement Act 2007 s 13(1), (12). For the purposes of s 13(1), an 'excluded decision' is (1) any decision of the Upper Tribunal on an appeal under the Data Protection Act 1998 s 28(4) or (6) (appeals against national security certificate), (2) any decision of the Upper Tribunal on an appeal under the Freedom of Information Act 2000 s 60(1) or (4) (appeals against national security certificate), (3) any decision of the Upper Tribunal on an application under the Tribunals, Courts and Enforcement Act 2007 s 11(4)(b) (see PARA 13A.7), (4) a decision of the Upper Tribunal under s 10 (see PARA 13A.6) (a) to review, or not to review, an earlier decision of the tribunal, (b) to take no action, or not to take any particular action, in the light of a review of an earlier decision of the tribunal, or (c) to set aside an earlier decision of the tribunal, (5) a decision of the Upper Tribunal that is set aside under s 10 (including a decision set aside after proceedings on an appeal under s 13 have been begun), or (6) any decision of the Upper Tribunal that is of a description specified in an order made by the Lord Chancellor: s 13(8). A description may be specified under head (6) above only if (i) in the case of a decision of that description, there is a right to appeal to a court from the decision and that right is, or includes, something other than a right (however expressed) to appeal on any point of law arising from the decision, or (ii) decisions of that description are made in carrying out a function transferred under s 30 (see PARA 13B.1) and prior to the transfer of the function under s 30(1) there was no right to appeal from decisions of that description: s 13(9). Where (A) an order under head (6) above specifies a description of decisions, and (B) decisions of that description are made in carrying out a function transferred under s 30, the order must be framed so as to come into force no later than the time when the transfer under s 30 of the function takes effect (but power to revoke the order continues to be exercisable after that time, and power to amend the order continues to be exercisable after that time for the purpose of narrowing the description for the time being specified): s 13(10).

The Lord Chancellor has specified the following decisions as excluded decisions under head (6) above: (aa) any decision under the Taxes Management Act 1970 s 20(7), (8B) or (8G)(b), 20B(1B) or (6) or 20BB(2)(a); (bb) any decision under the Inheritance Tax Act 1984 s 35A(2), 79A(2) or 219(1A); (cc) any decision under the Income and Corporation Taxes Act 1988 s 152(5) or 215(7); (dd) any decision under the Taxation of Chargeable Gains Act 1992 s 138(4); (ee) any decision under the Finance Act 1993 s 187(5) or (6), or Sch 21 para 3(2) or 6(2); (ff) any decision under the Finance Act 2000 Sch 15 para 91(5); (gg) any decision under the Finance Act 2002 Sch 29 para 88(5); (hh) any decision under the Finance Act 2003 Sch 13 para 2, 4, 7, 9, 10, 11 or 24; (ii) any decision under the Finance Act 2004 s 306A, 308A, 313B or 314A; (jj) any decision under the Income Tax Act 2007 s 697(4); (kk) any decision under the Venture Capital Trust (Winding up and Mergers) (Tax) Regulations 2004, SI 2004/2199, reg 10(3); (ll) any decision under the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2007, SI 2007/785, reg 5A, 7A, 12B or 12C: Appeals (Excluded Decisions) Order 2009, SI 2009/275.

3 Tribunals, Courts and Enforcement Act 2007 s 13(3).

4 Tribunals, Courts and Enforcement Act 2007 s 13(4). An application may be made under s 13(4) to the Court of Appeal only if permission has been refused by the Upper Tribunal: s 13(5). The Lord Chancellor may, as respects an application under s 13(4) for permission to appeal from any decision of the Upper Tribunal on an appeal under s 11 (see PARA 13A.7), by order make provision for permission not to be granted on the application unless the Upper Tribunal or (as the case may be) the Court of Appeal considers (1) that the proposed appeal would raise some important point of principle or practice, or (2) that there is some other compelling reason for the Court of Appeal to hear the appeal: s 13(6), (7). See further s 13(11), (12). Rules of court may make provision as to the time within which an application under s 13(4) to the Court of Appeal must be made: s 13(15).

Permission to appeal to the Court of Appeal may not be granted unless the Upper Tribunal or, where the Upper Tribunal refuses permission, the Court of Appeal, considers that the proposed appeal would raise some important point of principle or practice, or there is some other compelling reason for the Court of Appeal to hear the appeal: Appeals from the Upper Tribunal to the Court of Appeal Order 2008, SI 2008/2834.

5 Tribunals, Courts and Enforcement Act 2007 s 14(1).

6 Tribunals, Courts and Enforcement Act 2007 s 14(2)(a).

7 Tribunals, Courts and Enforcement Act 2007 s 14(2)(b)(i). In acting under s 14(2)(b)(i), the Court of Appeal may also (1) direct that the persons who are chosen to reconsider the case are not to be the same as those who (a) where the case is remitted to the Upper Tribunal, made the decision of the Upper Tribunal that has been set aside, or (b) where the case is remitted to another tribunal or person, made the decision in respect of which the appeal or reference to the Upper Tribunal was made; (2) give procedural directions in connection with the reconsideration of the case by the Upper Tribunal or other tribunal or person: s 14(3). Where under s 14(2)(b)(i) the Court of Appeal remits a case to the Upper Tribunal and the decision set aside under s 14(2)(a) was made by the Upper Tribunal on an appeal or reference from another tribunal or some other person, the Upper Tribunal may (instead of reconsidering the case itself) remit the case to that other tribunal or person, with the directions given by the relevant appellate court for its reconsideration: s 14(5). See also s 15(6).

8 Tribunals, Courts and Enforcement Act 2007 s 14(2)(b)(ii). In acting under s 14(2)(b)(ii), the Court of Appeal (1) may make any decision which the Upper Tribunal could make if the Upper Tribunal were re-making the decision or, as the case may be, which the other tribunal or person could make if that other tribunal or person were re-making the decision; and (2) may make such findings of fact as it considers appropriate: s 14(4).

9. 'Judicial review'

Where specified conditions are met¹, the Upper Tribunal has power to grant mandatory orders, prohibiting orders, quashing orders, declarations and injunctions². These forms of relief have the same effect as the corresponding relief granted by the High Court on an application for judicial review, and are enforceable as if they were relief granted by the High Court on an application for judicial review³. Provision is made for the High Court to transfer an application for judicial review, or for permission to apply for judicial review, to the Upper Tribunal⁴.

1 le the conditions set out in the Tribunals, Courts and Enforcement Act 2007 s 18.

2 Tribunals, Courts and Enforcement Act 2007 s 15(1), (2). See further s 15(4), (5). An application for relief under s 15(1) may only be made if permission has been obtained from the tribunal: see s 16. Section 17 makes supplementary provision in relation to quashing orders.

The Upper Tribunal is an alter ego of the High Court; it is not amenable to judicial review for excess of jurisdiction where, albeit acting within the field ascribed to it, it perpetrates a legal mistake; judicial review decisions of the Upper Tribunal cannot themselves be the subject of judicial review by the High Court. *R (on the application of Cart) v The Upper Tribunal; U v Special Immigration Appeals Commission; XC v Special Immigration Appeals Commission* [2009] EWHC 3052 (Admin), [2009] All ER (D) 22 (Dec), DC.

3 Tribunals, Courts and Enforcement Act 2007 s 15(3).

4 See the Senior Courts Act 1981 s 31A (added by the Tribunals, Courts and Enforcement Act 2007 s 19). See *Practice Direction (Upper Tribunal: judicial review jurisdiction)* [2009] 1 WLR 237 sub nom *Practice Direction (classes of cases specified under the Tribunals, Courts and Enforcement Act 2007 s 18(6))* [2008] All ER (D) 285 (Oct).

10. Tribunal Procedure Rules

There are to be rules, to be called 'Tribunal Procedure Rules', governing (1) the practice and procedure to be followed in the First-tier Tribunal, and (2) the practice and procedure to be followed in the Upper Tribunal¹. Tribunal Procedure Rules are to be made by the Tribunal Procedure Committee². Power to make Tribunal Procedure Rules is to be exercised with a view to securing (a) that, in proceedings before the First-tier Tribunal and Upper Tribunal, justice is done, (b) that the tribunal system³ is accessible and fair, (c) that proceedings before the First-tier Tribunal or Upper Tribunal are handled quickly and efficiently, (d) that the rules are both simple and simply expressed, and (e) that the rules where appropriate confer on members of the First-tier Tribunal, or Upper Tribunal, responsibility for ensuring that proceedings before the tribunal are handled quickly and efficiently⁴.

1 Tribunals, Courts and Enforcement Act 2007 s 22(1).

2 Tribunals, Courts and Enforcement Act 2007 s 22(2). Schedule 5 Pt 1 (paras 1-19) makes further provision about the content of Tribunal Procedure Rules, Sch 5 Pt 2 (paras 20-26) makes provision about the membership of the Tribunal Procedure Committee, Sch 5 Pt 3 (paras 27-29) makes provision about the making of Tribunal Procedure Rules by the Committee, and Sch 5 Pt 4 (para 30) confers power to amend legislation in connection with Tribunal Procedure Rules: s 22(3). See Tribunal Procedure (First-tier Tribunal) (Social Entitlement Chamber) Rules 2008, SI 2008/2685 (amended by SI 2009/274, SI 2009/1975, SI 2010/43); Tribunal Procedure (First-tier Tribunal) (War Pensions and Armed Forces Compensation Chamber) Rules 2008, SI 2008/2686 (amended by SI 2009/1975, SI 2010/43); Tribunal Procedure (Upper Tribunal) Rules 2008, SI 2008/2698 (amended by SI 2009/274, SI 2009/1975, SI 2010/43); Tribunal Procedure (First-tier Tribunal) (General Regulatory Chamber) Rules 2009, SI 2009/1976 (amended by SI 2010/43); Tribunal Procedure (First-tier Tribunal) (Health, Education and Social Care Chamber) Rules 2008, SI 2008/2699 (amended by SI 2009/1975, SI 2010/43); Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009, SI 2009/273 (amended by SI 2010/43).

3 I.e. the system for deciding matters within the jurisdiction of the First-tier Tribunal or the Upper Tribunal: Tribunals, Courts and Enforcement Act 2007 s 22(5).

4 Tribunals, Courts and Enforcement Act 2007 s 22(4).

11. Practice directions

The Senior President of Tribunals may give directions (1) as to the practice and procedure of the First-tier Tribunal; (2) as to the practice and procedure of the Upper Tribunal; and a Chamber President may give directions as to the practice and procedure of the chamber over which he presides¹.

1 See Tribunals, Courts and Enforcement Act 2007 s 23.

See *Practice Direction (First-tier Tribunal: education cases)* [2009] PTSR 318 (which applies to a 'special educational needs case' or 'disability discrimination in schools case').

See *Practice Direction (Upper Tribunal: transcripts)* [2009] 1 WLR 328 (record of proceedings to be kept for six months); *Practice Statement (Upper Tribunal: composition of Tribunal)* [2009] 1 WLR 329 (matters falling to be decided by the Administrative Appeals Chamber of the Upper Tribunal); *Practice Direction (First-tier and Upper Tribunals: Welsh language)* [2009] 1 WLR 331; *Practice Direction (First-tier and Upper Tribunal: witnesses)* [2009] 1 WLR 332; *Practice Direction (First-tier Tribunal: mental health cases)* [2009] PTSR 323; *Practice Statement (First-tier Tribunal: composition)* [2009] PTSR 332 (composition of the Health, Education and Social Care Chamber); *Practice Statement (First-tier and Upper Tribunal: form of decisions and neutral citation)* (31 October 2008, unreported); *Practice Statement (First-tier Tribunal: record of proceedings in the Social Entitlement Chamber)* (30 October 2008, unreported) (hearings involving social security and child support cases); *Practice Statement (First-tier Tribunal: composition of the Social Entitlement Chamber in social security and child support cases)* (30 October 2008, unreported); *Practice Statement (First-tier Tribunal: composition of Social Entitlement Chamber in asylum support cases)* (30 October 2008, unreported); *Practice Direction (First-tier Tribunal: asylum support cases)* (30 October 2008, unreported); *Practice Statement (First-tier and Upper Tribunal: delegation of functions to staff)* (30 October 2008, unreported); *Practice Statement (First-tier Tribunal: composition of Social Entitlement Chamber in criminal injury compensation cases)* (30 October 2008, unreported); *Practice Statement (First-tier and Upper Tribunal: composition of Tax Chamber and Finance and Tax*

Chamber) (10 March 2009, unreported); *Practice Statement (First-tier and Upper Tribunal: delegation of functions to staff in relation to the Tax Chamber)* (30 October 2008, unreported); *Practice Direction (First-tier Tribunal: categorisation of cases)* (10 March 2009, unreported); *Practice Statement (First-tier Tribunal: composition of War Pensions and Armed Forces Compensation Chamber)* (30 October 2008, unreported); *Practice Statement (Upper Tribunal: composition of tribunals in relation to matters that fall to be decided by the Lands Chamber on or after 1 June 2009)* (9 June 2009, unreported); *Practice Statement (Upper Tribunal: composition of tribunals in relation to matters that fall to be decided by the Administrative Appeals Chamber on or after 3 November 2008)* (9 June 2009, unreported); *Practice Statement (Upper Tribunal and First-tier Tribunal: composition of tribunals in relation to matters that fall to be decided by the Tax Chamber or the Finance and Tax Chamber on or after 1 April 2009)* (9 June 2009, unreported); *Practice Statement (General Regulatory Chamber: composition of Tribunals)* (21 August 2009, unreported); *Practice Statement (Tax Chamber of the First-Tier Tribunal and the Tax and Chancery Chamber of the Upper Tribunal: composition of Tribunals)* (27 August 2009, unreported); *Practice Directions (Immigration and Asylum Chambers of the First-tier Tribunal and Upper Tribunal)* (10 February 2010, unreported); *Practice Statements (Immigration and Asylum Chambers of the First-tier Tribunal and Upper Tribunal)* (10 February 2010, unreported). See further PARAS 13A.4, 13A.10.

12. Mediation

A person exercising power to make Tribunal Procedure Rules or give practice directions must, when making provision in relation to mediation, have regard to the following principles (1) mediation of matters in dispute between parties to proceedings is to take place only by agreement between those parties; (2) where parties to proceedings fail to mediate, or where mediation between parties to proceedings fails to resolve disputed matters, the failure is not to affect the outcome of the proceedings¹. Practice directions may provide for members to act as mediators in relation to disputed matters in a case that is the subject of proceedings².

1 Tribunals, Courts and Enforcement Act 2007 s 24(1).

2 Tribunals, Courts and Enforcement Act 2007 s 24(2). See further s 24(3)-(6).

13. Supplementary powers of Upper Tribunal

In relation to the attendance and examination of witnesses, the production and inspection of documents, and all other matters incidental to the its functions, the Upper Tribunal has, in England and Wales, the same powers, rights, privileges and authority as the High Court¹.

1 Tribunals, Courts and Enforcement Act 2007 s 25(1), (2). Section 25(1) is not to be taken (1) to limit any power to make Tribunal Procedure Rules; (2) to be limited by anything in Tribunal Procedure Rules other than an express limitation: s 25(3). A power, right, privilege or authority conferred in a territory by s 25(1) is available for purposes of proceedings in the Upper Tribunal that take place outside that territory (as well as for purposes of proceedings in the tribunal that take place within that territory): s 25(4).

14. First-tier Tribunal and Upper Tribunal: sitting places

Each of the First-tier Tribunal and the Upper Tribunal may decide a case in England and Wales, in Scotland, or in Northern Ireland, even though the case arises under the law of a territory other than the one in which the case is decided¹.

1 Tribunals, Courts and Enforcement Act 2007 s 26.

15. Enforcement

A sum payable in pursuance of a decision of the First-tier Tribunal or Upper Tribunal made in England and Wales (1) is recoverable as if it were payable under an order of a county court in England and Wales; (2) is recoverable as if it were payable under an order of the High Court¹.

The Lord Chancellor may by order make provision for the provision above to apply in relation to a sum of a description specified in the order with the omission of one (but not both) of heads (1) and (2) above².

Tribunal Procedure Rules (a) may make provision as to where, for purposes of these provisions, a decision is to be taken to be made; (b) may provide for the above provision³ to apply only, or not to apply except, in relation to sums of a description specified in Tribunal Procedure Rules⁴.

1 Tribunals, Courts and Enforcement Act 2007 s 27(1). Section 27 does not apply to a sum payable in pursuance of an award under s 16(6) (see PARA 13A.9): s 27(4).

2 Tribunals, Courts and Enforcement Act 2007 s 27(5). As to orders under Pt 1 (ss 1-49) generally see s 49. The Lord Chancellor's functions under Pt 1 are protected functions: see the Constitutional Reform Act 2005 s 19, Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 489A.

3 Ie the Tribunals, Courts and Enforcement Act 2007 s 27(1).

4 Tribunals, Courts and Enforcement Act 2007 s 27(6).

16. Assessors

If it appears to the First-tier Tribunal or the Upper Tribunal that a matter before it requires special expertise not otherwise available to it, it may direct that in dealing with that matter it must have the assistance of a person or persons appearing to it to have relevant knowledge or experience¹. The remuneration of a person who gives assistance to either tribunal as mentioned above will be determined and paid by the Lord Chancellor². The Lord Chancellor may (1) establish panels of persons from which either tribunal may (but need not) select persons to give it assistance as mentioned above; (2) under head (1) above establish different panels for different purposes; (3) after carrying out such consultation as he considers appropriate, appoint persons to a panel established under head (1) above; (4) remove a person from such a panel³.

1 Tribunals, Courts and Enforcement Act 2007 s 28(1).

2 Tribunals, Courts and Enforcement Act 2007 s 28(2).

3 Tribunals, Courts and Enforcement Act 2007 s 28(3).

The Lord Chancellor's functions under Pt 1 (ss 1-49) are protected functions: see the Constitutional Reform Act 2005 s 19, Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 489A.

17. Costs

The costs of and incidental to all proceedings in the First-tier Tribunal, and all proceedings in the Upper Tribunal, are in the discretion of the tribunal in which the proceedings take place¹.

1 See Tribunals, Courts and Enforcement Act 2007 s 29(1). The relevant Tribunal has full power to determine by whom and to what extent the costs are to be paid: s 29(2). Section 29(1), (2) has effect subject to Tribunal Procedure Rules (see PARA 13A.10): s 29(3). See further s 29(4)-(6).

UPDATE

13-15 Statutory Tribunals and Public Inquiries

The Tribunals, Courts and Enforcement Act 2007 Pt 1 (ss 1-49) creates a new, simplified statutory framework for tribunals. It provides a new unified structure by creating two new tribunals, the First-tier Tribunal and the Upper Tribunal: see Pt 1 Ch 2

(ss 3-29); and PARA 13A. The Lord Chancellor has power to transfer the jurisdiction of existing tribunals to the two new tribunals: see Pt 1 Ch 3 (ss 30-38); and PARA 13B. As to administrative matters in respect of certain tribunals see PARA 13C; and as to supplementary provision see PARA 13D.

The Council on Tribunals and the Scottish Committee of the Council on Tribunals are abolished and replaced by the Administrative Justice and Tribunals Council: see ss 44, 45, Sch 7; and PARA 57A.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/1. INTRODUCTION/(4) STATUTORY TRIBUNALS AND PUBLIC INQUIRIES/(i) Statutory Tribunals/13B. Transfer of tribunal functions.

13B. Transfer of tribunal functions.

1. Transfer of functions of certain tribunals

The Lord Chancellor may by order provide for a function of a scheduled tribunal¹ to be transferred (1) to the First-tier Tribunal, (2) to the Upper Tribunal, (3) to the First-tier Tribunal and the Upper Tribunal with the question as to which of them is to exercise the function in a particular case being determined by a person under provisions of the order, (4) to the First-tier Tribunal to the extent specified in the order and to the Upper Tribunal to the extent so specified, (5) to the First-tier Tribunal and the Upper Tribunal with the question as to which of them is to exercise the function in a particular case being determined by, or under, Tribunal Procedure Rules, (6) to an employment tribunal, (7) to the Employment Appeal Tribunal, (8) to an employment tribunal and the Employment Appeal Tribunal with the question as to which of them is to exercise the function in a particular case being determined by a person under provisions of the order, or (9) to an employment tribunal to the extent specified in the order and to the Employment Appeal Tribunal to the extent so specified².

¹ In the Tribunals, Courts and Enforcement Act 2007 s 30(1) 'scheduled tribunal' means a tribunal in a list in Sch 6 (amended by SI 2008/2833, SI 2009/1836) that has effect for the purposes of the Tribunals, Courts and Enforcement Act 2007 s 30: s 30(2). As to the power to amend lists of tribunals in Sch 6 see s 37.

² Tribunals, Courts and Enforcement Act 2007 s 30(1). As to the First-tier Tribunal and the Upper Tribunal see PARA 13A. The Lord Chancellor may, as respects a function transferred under s 30(1) or s 30(3), by order provide for the function to be further transferred as mentioned in any of heads (1)-(9) in the text: s 30(3). An order under s 30(1) or (3) may include provision for the purposes of or in consequence of, or for giving full effect to, a transfer under that provision: s 30(4). For supplementary provision as to orders see s 38. As to orders under Pt 1 (ss 1-49) generally see s 49. A function of a tribunal may not be transferred under s 30(1) or (3) if, or to the extent that, the provision conferring the function (1) would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament, or (2) would be within the legislative competence of the Northern Ireland Assembly if it were included in an Act of that Assembly: s 30(5). Section 30(5) does not apply to (a) the Secretary of State's function of deciding appeals under the Consumer Credit Act 1974 s 41, (b) functions of the Consumer Credit Appeals Tribunal (abolished: see SI 2009/1835), (c) the Secretary of State's function of deciding appeals under the Estate Agents Act 1979 s 7(1), or (d) functions of an adjudicator under the Criminal Injuries Compensation Act 1995 s 5: Tribunals, Courts and Enforcement Act 2007 s 30(6). A function of a tribunal may be transferred under s 30(1) or (3) only with the consent of the Welsh Ministers if any relevant function is exercisable in relation to the tribunal by the Welsh Ministers (whether by the Welsh Ministers alone, or by the Welsh Ministers jointly or concurrently with any other person): s 30(8). In s 30(8) 'relevant function', in relation to a tribunal, means a function which relates (i) to the operation of the tribunal (including, in particular, its membership, administration, staff, accommodation and funding, and payments to its members or staff), or (ii) to the provision of expenses and allowances to persons attending the tribunal or attending elsewhere in connection with proceedings before the tribunal: s 30(9). See the Transfer of Tribunal Functions Order 2008, SI 2008/2833, art 3, Sch 1; the Transfer of Functions of the Charity Tribunal Order 2009, SI 2009/1834, art 2; the Transfer of Functions of the Consumer Credit Appeals Tribunal Order 2009, SI

2009/1835, art 2; the Transfer of Functions (Estate Agents Appeals and Additional Scheduled Tribunal) Order 2009, SI 2009/1836, art 2; and the Transfer of Functions (Transport Tribunal and Appeal Panel) Order 2009, SI 2009/1885, art 2.

The Lord Chancellor's functions under the Tribunals, Courts and Enforcement Act 2007 Pt 1 (ss 1-49) are protected functions: see the Constitutional Reform Act 2005 s 19, Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 489A.

2. Supplementary powers and power to provide for appeal to Upper Tribunal from tribunals in Wales

The Lord Chancellor may by order make provision for abolishing the tribunal by whom a function transferred¹ is exercisable immediately before its transfer². The Lord Chancellor may by order make provision, where functions of a tribunal are transferred³, for a person (1) who is the tribunal (but is not the Secretary of State), or (2) who is a member of the tribunal, or (3) who is an authorised decision-maker for the tribunal, to (instead or in addition) be the holder of an office specified below⁴. Those offices are (a) transferred-in judge of the First-tier Tribunal, (b) transferred-in other member of the First-tier Tribunal, (c) transferred-in judge of the Upper Tribunal, (d) transferred-in other member of the Upper Tribunal, and (e) deputy judge of the Upper Tribunal⁵. Where a function of a tribunal is transferred⁶, the Lord Chancellor may by order provide for procedural rules⁷ in force immediately before the transfer to have effect, or to have effect with appropriate modifications⁸, after the transfer (and, accordingly, to be capable of being varied or revoked) as if they were (i) Tribunal Procedure Rules, or (ii) employment tribunal procedure regulations, or Appeal Tribunal procedure rules⁹. The Lord Chancellor may, in connection with provision made by order¹⁰ or the preceding provisions¹¹, make by order such incidental, supplemental, transitional or consequential provision, or provision for savings, as the Lord Chancellor thinks fit, including provision applying only in relation to cases selected by a member (A) of the First-tier Tribunal, (B) of the Upper Tribunal, (c) of the Employment Appeal Tribunal, or (D) of a panel of members of employment tribunals¹².

Provision is made with respect to the power to provide for an appeal to the Upper Tribunal from tribunals in Wales¹³.

1 Ie under the Tribunals, Courts and Enforcement Act 2007 s 30(1): see PARA 13B.1.

2 Tribunals, Courts and Enforcement Act 2007 s 31(1). For supplementary provision as to orders see s 38. As to orders under Pt 1 (ss 1-49) generally see s 49. The Lord Chancellor's functions under Pt 1 (ss 1-49) are protected functions: see the Constitutional Reform Act 2005 s 19, Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 489A. See the Transfer of Functions of the Charity Tribunal Order 2009, SI 2009/1834; and the Transfer of Functions of the Consumer Credit Appeals Tribunal Order 2009, SI 2009/1835.

3 Ie under the Tribunals, Courts and Enforcement Act 2007 s 30(1).

4 Ie specified in the Tribunals, Courts and Enforcement Act 2007 s 31(3): s 31(2). Where functions of a tribunal are transferred under s 30(1), the Lord Chancellor must exercise the power under s 31(2) so as to secure that each person who immediately before the end of the tribunal's life (1) is the tribunal, (2) is a member of the tribunal, or (3) is an authorised decision-maker for the tribunal, becomes the holder of an office specified in s 31(3) with effect from the end of the tribunal's life (if the person is not then already the holder of such an office): s 31(4). Section 31(4) does not apply in relation to a person (a) by virtue of the person's being the Secretary of State, or (b) by virtue of the person's being a Commissioner for the general purposes of the income tax; and a reference in s 31(4) to the end of a tribunal's life is to when the tribunal is abolished or (without being abolished) comes to have no functions: s 31(5). As to the 'authorised decision-maker' see s 31(6). See the Transfer of Functions of the Charity Tribunal Order 2009, SI 2009/1834; the Transfer of Functions of the Consumer Credit Appeals Tribunal Order 2009, SI 2009/1835; the Transfer of Functions (Estate Agents Appeals and Additional Scheduled Tribunal) Order 2009, SI 2009/1836; and the Transfer of Functions (Transport Tribunal and Appeal Panel) Order 2009, SI 2009/1885, art 2.

5 Tribunals, Courts and Enforcement Act 2007 s 31(3).

6 Ie under the Tribunals, Courts and Enforcement Act 2007 s 30(1).

7 'Procedural rules' means provision (whether called rules or not) (1) regulating practice or procedure before the tribunal, and (2) applying for purposes connected with the exercise of the function: Tribunals, Courts and Enforcement Act 2007 s 31(8).

8 'Appropriate modifications' means modifications (including additions and omissions) that appear to the Lord Chancellor to be necessary to secure, or expedient in connection with securing, that the procedural rules apply in relation to the exercise of the function after the transfer: Tribunals, Courts and Enforcement Act 2007 s 31(8).

9 le within the meaning given by the Employment Tribunals Act 1996 s 42(1): the Tribunals, Courts and Enforcement Act 2007 s 31(7).

10 le under the Tribunals, Courts and Enforcement Act 2007 s 30.

11 le the proceeding provisions of the Tribunals, Courts and Enforcement Act 2007 s 31.

12 Tribunals, Courts and Enforcement Act 2007 s 31(9). Section 31(1), (2) and (7) are not to be taken as prejudicing the generality of s 31(9): s 31(10). See the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order 2008, SI 2008/2683; See the Transfer of Functions of the Charity Tribunal Order 2009, SI 2009/1834; the Transfer of Functions of the Consumer Credit Appeals Tribunal Order 2009, SI 2009/1835; the Transfer of Functions (Estate Agents Appeals and Additional Scheduled Tribunal) Order 2009, SI 2009/1836; and the Transfer of Functions (Transport Tribunal and Appeal Panel) Order 2009, SI 2009/1885, art 2.

13 See the Tribunals, Courts and Enforcement Act 2007 s 32. See the Transfer of Tribunal Functions Order 2008, SI 2008/2833, reg 6.

3. Transfer of ministerial responsibilities for certain tribunals

The Lord Chancellor may by order (1) transfer any relevant function¹, so far as that function is exercisable by a minister of the Crown² (a) to the Lord Chancellor, or (b) to two (or more) ministers of the Crown of whom one is the Lord Chancellor; (2) provide for any relevant function that is exercisable by a minister of the Crown other than the Lord Chancellor to be exercisable by the other minister of the Crown concurrently with the Lord Chancellor; (3) provide for any relevant function that is exercisable by the Lord Chancellor concurrently with another minister of the Crown to cease to be exercisable by the other minister of the Crown³. A relevant function may not be transferred⁴ if, or to the extent that, the provision conferring the function (i) would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament, or (ii) would be within the legislative competence of the Northern Ireland Assembly if it were included in an Act of that Assembly⁵. An order⁶ (A) may relate to a function either wholly or in cases (including cases framed by reference to areas) specified in the order; (B) may include provision for the purposes of, or in consequence of, or for giving full effect to, the transfer or (as the case may be) other change as regards exercise; (C) may include such incidental, supplementary, transitional or consequential provision or savings as the Lord Chancellor thinks fit; (D) may include provision for the transfer of any property, rights or liabilities of the person who loses functions or whose functions become shared with the Lord Chancellor⁷. An order⁸, so far as it (aa) provides under head (1) above for the transfer of a function, or (bb) provides under head (2) above for a function to become exercisable by the Lord Chancellor, or (cc) provides under head (3) above for a function to cease to be exercisable by a Minister of the Crown other than the Lord Chancellor, may not, after that transfer or other change has taken place, be revoked by another order⁹.

1 In the Tribunals, Courts and Enforcement Act 2007 s 35 'relevant function' means a function, in relation to a scheduled tribunal, which relates (1) to the operation of the tribunal (including, in particular, its membership, administration, staff, accommodation and funding, and payments to its members or staff), or (2) to the provision of expenses and allowances to persons attending the tribunal or attending elsewhere in connection with proceedings before the tribunal: s 35(2). In s 35(2) 'scheduled tribunal' means a tribunal in a list in Sch 6 (amended by SI 2008/2833) that has effect for the purposes of the Tribunals, Courts and Enforcement Act 2007 s 35: s 35(3). As to the power to amend lists of tribunals in Sch 6 see s 37.

2 In the Tribunals, Courts and Enforcement Act 2007 s 35 'Minister of the Crown' has the meaning given by the Ministers of the Crown Act 1975 s 8(1) but includes the Commissioners for Her Majesty's Revenue and Customs: Tribunals, Courts and Enforcement Act 2007 s 35(10). Any reference in s 35(1) to a minister of the Crown includes a reference to a minister of the Crown acting jointly: s 35(6).

3 Tribunals, Courts and Enforcement Act 2007 s 35(1). For supplementary provision as to orders see s 38. As to orders under Pt 1 (ss 1-49) generally see s 49. The Lord Chancellor's functions under Pt 1 (ss 1-49) are protected functions: see the Constitutional Reform Act 2005 s 19, Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 489A.

The Ministers of the Crown Act 1975 s 1 (power to transfer ministerial functions) does not apply to a function of the Lord Chancellor (1) so far as it is a function transferred to the Lord Chancellor under head (1) in the text, (2) so far as it is a function exercisable by the Lord Chancellor as a result of provision under head (2) in the text, or (3) so far as it is a function that has become exercisable by the Lord Chancellor alone as a result of provision under head (3) in the text: s 35(9).

4 Ie under the Tribunals, Courts and Enforcement Act 2007 s 35(1).

5 Tribunals, Courts and Enforcement Act 2007 s 35(4). Section 35(4) does not apply to any relevant function of the Secretary of State (1) under the Consumer Credit Act 1974 s 41 (appeals), or (2) under the Estate Agents Act 1979 s 7 (appeals): Tribunals, Courts and Enforcement Act 2007 s 35(5).

6 Ie under the Tribunals, Courts and Enforcement Act 2007 s 35(1).

7 Tribunals, Courts and Enforcement Act 2007 s 35(7).

8 Ie under the Tribunals, Courts and Enforcement Act 2007 s 35(1).

9 Ie another order under the Tribunals, Courts and Enforcement Act 2007 s 35(1): s 35(8).

4. Transfer of powers to make procedural rules for certain tribunals

The Lord Chancellor may by order transfer any power to make procedural rules¹ for a scheduled tribunal² to (1) himself, or (2) the Tribunal Procedure Committee³. A power may not be transferred⁴ if, or to the extent that, the provision conferring the power (a) would be within the legislative competence of the Scottish Parliament if it were included in an Act of that Parliament, or (b) would be within the legislative competence of the Northern Ireland Assembly if it were included in an Act of that Assembly⁵. An order under these provisions (i) may relate to a power either wholly or in cases (including cases framed by reference to areas) specified in the order; (ii) may include provision for the purposes of or in consequence of, or for giving full effect to, the transfer; (iii) may include such incidental, supplementary, transitional or consequential provision or savings as the Lord Chancellor thinks fit⁶. A power to make procedural rules for a tribunal that is exercisable by the Tribunal Procedure Committee by virtue of an order under these provisions must be exercised by the committee with a view to securing (A) that the system for deciding matters within the jurisdiction of that tribunal is accessible and fair, (B) that proceedings before that tribunal are handled quickly and efficiently, (C) that the rules are both simple and simply expressed, and (D) that the rules where appropriate confer on persons who are, or who are members of, that tribunal responsibility for ensuring that proceedings before that tribunal are handled quickly and efficiently⁷.

1 In the Tribunals, Courts and Enforcement Act 2007 s 36 'procedural rules', in relation to a tribunal, means provision (whether called rules or not) regulating practice or procedure before the tribunal: s 36(8).

2 In the Tribunals, Courts and Enforcement Act 2007 s 36 'scheduled tribunal' means a tribunal in a list in Sch 6 (amended by SI 2008/2833) that has effect for the purposes of the Tribunals, Courts and Enforcement Act 2007 s 36: s 36(8). As to the power to amend lists of tribunals in Sch 6 see s 37.

3 Tribunals, Courts and Enforcement Act 2007 s 36(1). An order under head (2) in the text (1) may not alter any parliamentary procedure relating to the making of the procedural rules concerned, but (2) may otherwise include provision for the purpose of assimilating the procedure for making them to the procedure for making Tribunal Procedure Rules: s 36(4). An order under head (2) in the text may include provision requiring the Tribunal Procedure Committee to make procedural rules for purposes notified to it by the Lord Chancellor: s

36(5). For supplementary provision as to orders see s 38. As to orders under Pt 1 (ss 1-49) generally see s 49. The Lord Chancellor's functions under Pt 1 (ss 1-49) are protected functions: see the Constitutional Reform Act 2005 s 19, Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 489A.

4 le under the Tribunals, Courts and Enforcement Act 2007 s 36(1).

5 Tribunals, Courts and Enforcement Act 2007 s 36(2). Section 36(2) does not apply to (1) power conferred by the Consumer Credit Act 1974 s 40A(3) or 41(2) (power to make provision with respect to appeals), or (2) power conferred by the Estate Agents Act 1979 s 7(3) (duty of Secretary of State to make regulations with respect to appeals under s 7(1)); Tribunals, Courts and Enforcement Act 2007 s 36(3) (prospectively amended by Sch 23 Pt 1).

6 Tribunals, Courts and Enforcement Act 2007 s 36(6).

7 Tribunals, Courts and Enforcement Act 2007 s 36(7).

UPDATE

13-15 Statutory Tribunals and Public Inquiries

The Tribunals, Courts and Enforcement Act 2007 Pt 1 (ss 1-49) creates a new, simplified statutory framework for tribunals. It provides a new unified structure by creating two new tribunals, the First-tier Tribunal and the Upper Tribunal: see Pt 1 Ch 2 (ss 3-29); and PARA 13A. The Lord Chancellor has power to transfer the jurisdiction of existing tribunals to the two new tribunals: see Pt 1 Ch 3 (ss 30-38); and PARA 13B. As to administrative matters in respect of certain tribunals see PARA 13C; and as to supplementary provision see PARA 13D.

The Council on Tribunals and the Scottish Committee of the Council on Tribunals are abolished and replaced by the Administrative Justice and Tribunals Council: see ss 44, 45, Sch 7; and PARA 57A.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/1. INTRODUCTION/(4) STATUTORY TRIBUNALS AND PUBLIC INQUIRIES/(i) Statutory Tribunals/13C. Administrative matters in respect of certain tribunals.

13C. Administrative matters in respect of certain tribunals.

1. The general duty

The Lord Chancellor is under a duty to ensure that there is an efficient and effective system to support the carrying on of the business of (1) the First-tier Tribunal, (2) the Upper Tribunal, (3) employment tribunals, (4) the Employment Appeal Tribunal, and (5) the Asylum and Immigration Tribunal, and that appropriate services are provided for those tribunals (referred to¹ as 'the tribunals')². The Lord Chancellor must annually prepare and lay before each House of Parliament a report as to the way in which he has discharged his general duty in relation to the tribunals³.

1 le referred to in the Tribunals, Courts and Enforcement Act 2007 ss 39-41: see below and PARAS 13C.2, 13C.3.

2 Tribunals, Courts and Enforcement Act 2007 s 39(1). As to the First-tier Tribunal and the Upper Tribunal see PARA 13A. Any reference in s 39, or in s 40 or 41, to the Lord Chancellor's general duty in relation to the tribunals is to his duty under s 39(1): s 39(2).

3 Tribunals, Courts and Enforcement Act 2007 s 39(3).

The Lord Chancellor's functions under Pt 1 (ss 1-49) are protected functions: see the Constitutional Reform Act 2005 s 19, Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 489A.

2. Tribunal staff and services

The Lord Chancellor may appoint such staff as appear to him appropriate for the purpose of discharging his general duty in relation to the tribunals¹. The Lord Chancellor may enter into such contracts with other persons for the provision, by them or their sub-contractors, of staff or services as appear to him appropriate for the purpose of discharging his general duty in relation to the tribunals². The Lord Chancellor may not enter into contracts for the provision of staff to discharge functions which involve making judicial decisions or exercising any judicial discretion³. The Lord Chancellor may not enter into contracts for the provision of staff to carry out the administrative work of the tribunals unless an order made by the Lord Chancellor authorises him to do so⁴.

1 Tribunals, Courts and Enforcement Act 2007 s 40(1).

2 Tribunals, Courts and Enforcement Act 2007 s 40(2). Section 40(2) is subject to s 40(3) and (4): s 40(2).

3 Tribunals, Courts and Enforcement Act 2007 s 40(3).

4 Tribunals, Courts and Enforcement Act 2007 s 40(4). Before making an order under s 40(4) the Lord Chancellor must consult the Senior President of Tribunals as to what effect (if any) the order might have on the proper and efficient administration of justice: s 40(5). An order under s 40(4) may authorise the Lord Chancellor to enter into contracts for the provision of staff to discharge functions (1) wholly or to the extent specified in the order, (2) generally or in cases or areas specified in the order, and (3) unconditionally or subject to the fulfilment of conditions specified in the order: s 40(6). As to orders under Pt 1 (ss 1-49) generally see s 49. See also Contracting Out (Administrative Work of Tribunals) Order 2009, SI 2009/121.

The Lord Chancellor's functions under Pt 1 are protected functions: see the Constitutional Reform Act 2005 s 19, Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 489A.

3. Provision of accommodation

The Lord Chancellor may provide, equip, maintain and manage such tribunal buildings¹, offices and other accommodation as appear to him appropriate for the purpose of discharging his general duty in relation to the tribunals². The Lord Chancellor may enter into such arrangements for the provision, equipment, maintenance or management of tribunal buildings, offices or other accommodation as appear to him appropriate for the purpose of discharging his general duty in relation to the tribunals³.

1 In the Tribunals, Courts and Enforcement Act 2007 s 41 'tribunal building' means any place where any of the tribunals sits, including the precincts of any building in which it sits: s 41(4).

2 Tribunals, Courts and Enforcement Act 2007 s 41(1).

3 Tribunals, Courts and Enforcement Act 2007 s 41(2). The powers under (1) the Commissioners of Works Act 1852 s 2 (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 940), and (2) the Town and Country Planning Act 1990 s 228(1) (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) PARA 939), to acquire land necessary for the public service are to be treated as including power to acquire land for the purpose of its provision under arrangements entered into under the Tribunals, Courts and Enforcement Act 2007 s 41(2): s 41(3).

The Lord Chancellor's functions under Pt 1 (ss 1-49) are protected functions: see the Constitutional Reform Act 2005 s 19, Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 489A.

4. Fees

The Lord Chancellor may by order prescribe fees payable in respect of (1) anything dealt with by the First-tier Tribunal, (2) anything dealt with by the Upper Tribunal, (3) anything dealt with by the Asylum and Immigration Tribunal, (4) anything dealt with by an added tribunal¹, and (5) mediation conducted by staff². An order³ may, in particular, contain provision as to (a) scales or rates of fees; (b) exemptions from or reductions in fees; (c) remission of fees in whole or in part⁴. Before making an order, the Lord Chancellor must consult (i) the Senior President of Tribunals, and (ii) the Administrative Justice and Tribunals Council⁵. The Lord Chancellor must take such steps as are reasonably practicable to bring information about fees⁶ to the attention of persons likely to have to pay them⁷. Fees⁸ are recoverable summarily as a civil debt⁹.

1 In head (4) in the text 'added tribunal' means a tribunal specified in an order made by the Lord Chancellor: Tribunals, Courts and Enforcement Act 2007 s 42(3). A tribunal may be specified in an order under s 42(3) only if (1) it is established by or under an enactment, whenever passed or made, and (2) is not an ordinary court of law: s 42(4).

2 The staff appointed under the Tribunals, Courts and Enforcement Act 2007 s 40(1) (see PARA 13C.2): s 42(1). The making of an order under s 42(1) requires the consent of the Treasury except where the order contains provision only for the purpose of altering amounts payable by way of fees already prescribed under that provision: s 42(6). As to orders under Pt 1 (ss 1-49) generally see s 49.

3 The under the Tribunals, Courts and Enforcement Act 2007 s 42(1).

4 Tribunals, Courts and Enforcement Act 2007 s 42(2).

5 Tribunals, Courts and Enforcement Act 2007 s 42(5). Until the Administrative Justice and Tribunals Council first has ten members appointed under Sch 7 para 1(2), the reference to that council in s 42(5) is to be read as a reference to the Council on Tribunals: s 42(10). As to the Administrative Justice and Tribunals Council see s 44.

6 The under the Tribunals, Courts and Enforcement Act 2007 s 42(1).

7 Tribunals, Courts and Enforcement Act 2007 s 42(7).

8 The fees payable under the Tribunals, Courts and Enforcement Act 2007 s 42(1).

9 Tribunals, Courts and Enforcement Act 2007 s 42(8).

The Lord Chancellor's functions under Pt 1 (ss 1-49) are protected functions: see the Constitutional Reform Act 2005 s 19, Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 489A.

5. Report by Senior President of Tribunals

Each year the Senior President of Tribunals must give the Lord Chancellor a report covering, in relation to relevant tribunal cases¹ (1) matters that the Senior President of Tribunals wishes to bring to the attention of the Lord Chancellor, and (2) matters that the Lord Chancellor has asked the Senior President of Tribunals to cover in the report².

1 In the Tribunals, Courts and Enforcement Act 2007 s 43 'relevant tribunal cases' means (1) cases coming before the First-tier Tribunal, (2) cases coming before the Upper Tribunal, (3) cases coming before the Employment Appeal Tribunal, (4) cases coming before employment tribunals, and (5) cases coming before the Asylum and Immigration Tribunal: s 43(3) (amended by UK Borders Act 2007 s 56(1), Schedule).

2 Tribunals, Courts and Enforcement Act 2007 s 43(1). The Lord Chancellor must publish each report given to him under s 43(1): s 43(2).

The Lord Chancellor's functions under Pt 1 (ss 1-49) are protected functions: see the Constitutional Reform Act 2005 s 19, Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 489A.

In exercising the function under the Tribunals, Courts and Enforcement Act 2007 s 43 the Senior President of Tribunals must have regard to (1) the functions of the Chief Inspector of the UK Border Agency, and (2) in particular, the Secretary of State's power to request the Chief Inspector to report about specified matters: UK Borders Act 2007 s 56(2) (amended by Borders, Citizenship and Immigration Act 2009 s 28(9)).

UPDATE**13-15 Statutory Tribunals and Public Inquiries**

The Tribunals, Courts and Enforcement Act 2007 Pt 1 (ss 1-49) creates a new, simplified statutory framework for tribunals. It provides a new unified structure by creating two new tribunals, the First-tier Tribunal and the Upper Tribunal: see Pt 1 Ch 2 (ss 3-29); and PARA 13A. The Lord Chancellor has power to transfer the jurisdiction of existing tribunals to the two new tribunals: see Pt 1 Ch 3 (ss 30-38); and PARA 13B. As to administrative matters in respect of certain tribunals see PARA 13C; and as to supplementary provision see PARA 13D.

The Council on Tribunals and the Scottish Committee of the Council on Tribunals are abolished and replaced by the Administrative Justice and Tribunals Council: see ss 44, 45, Sch 7; and PARA 57A.

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13D. Supplementary.

Provision is made as to the delegation of functions by the Lord Chief Justice¹. A duty of co-operation between the officers of the Senior President of Tribunals and the Lord Chief Justice in relation to judicial training, guidance and welfare is established².

¹ See Tribunals, Courts and Enforcement Act 2007 s 46. For transitional provision see s 48, Sch 9; Membership of the Tribunal Procedure Committee Transitional Order 2008, SI 2008/1149; and Tribunals, Courts and Enforcement Act 2007 (Transitional Judicial Pensions Provisions) Regulations 2008, SI 2008/2697.

² See Tribunals, Courts and Enforcement Act 2007 s 47. For transitional provision see NOTE 1.

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14. Appointment and removal of chairman and members of various tribunals.

In the case of child support and appeal tribunals¹ and reinstatement committees², the chairman, or any person appointed to act as chairman, must be selected by the appropriate authority³ from a panel of persons appointed by the Lord Chancellor⁴. In the case of a tribunal of inquiry for the purpose of cancelling or suspending mining certificates⁵ the person constituting the tribunal is appointed by the Lord Chancellor, who designates the chairman if the tribunal consists of more than one person⁶.

A panel may be constituted for the purposes either of a single tribunal or of two or more tribunals, whether or not of the same description⁷. Members of panels hold and vacate office under the terms of the instruments under which they are appointed, but may resign office by notice in writing to the Lord Chancellor and any member who vacates or resigns his office is eligible for reappointment⁸.

Any of the above provisions may be applied by order⁹ to any other of the specified statutory tribunals¹⁰. Provision may be made by order for appointment by the Lord Chancellor of the chairman of such tribunal or any person to be appointed to act as chairman¹¹. Orders may adapt the Tribunals and Inquiries Act 1992 as necessary or expedient in consequence of such order¹².

The Council on Tribunals¹³ may make to the appropriate minister¹⁴ general recommendations as to the making of appointments to membership of the specified statutory tribunals¹⁵, or of panels constituted for the purposes of any such tribunals¹⁶. That minister must have regard to such recommendations, but without prejudice to any statutory provisions affecting such appointments¹⁷.

Any power of a minister other than the Lord Chancellor to terminate a person's membership of certain specified statutory tribunals¹⁸, or of a panel constituted for the purposes of any such tribunal, requires the consent of the following persons to its exercise: if the tribunal sits in all parts of the United Kingdom¹⁹, the Lord Chancellor, the Lord President of the Court of Session and the Lord Chief Justice of Northern Ireland; if the tribunal sits in all parts of Great Britain²⁰, the Lord Chancellor and the Lord President of the Court of Session; if the tribunal sits only in England and Wales, the Lord Chancellor²¹.

A person is not qualified to be appointed as an umpire or a deputy umpire under the Reserve Forces (Safeguard of Employment) Act 1985 unless he is a barrister, advocate or solicitor of not less than ten years standing²². A person may not be appointed as a chairman of an employment tribunal unless he is a barrister or solicitor of not less than seven years' standing²³.

1 Ie constituted under the Child Support Act 1991 s 20 (as substituted): see **CHILDREN AND YOUNG PERSONS** vol 5(3) (2008 Reissue) para 557.

2 Ie appointed under the Reserve Forces (Safeguard of Employment) Act 1985 s 8, Sch 2 para 5 (as amended): see **ARMED FORCES** vol 2(2) (Reissue) para 92.

3 'The appropriate authority' means the minister who, apart from the provisions of the Tribunals and Inquiries Act 1992, would be empowered to appoint or select the chairman, person to act as chairman, member or members of the tribunal in question: s 6(6). References in the Tribunals and Inquiries Act 1992 to members of tribunals include references to the person constituting a tribunal consisting of one person: s 16(3).

4 Ibid s 6(1), (3) (amended by the Social Security Act 1998 s 86(1), Sch 7 para 118(1)). As to the Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 477 et seq.

5 le tribunals for the purposes of the Mines and Quarries Act 1954 s 150 (as amended): see **MINES, MINERALS AND QUARRIES** vol 31 (2003 Reissue) para 520.

6 Tribunals and Inquiries Act 1992 s 6(5). In the case of an appeal tribunal constituted under the Banking Act 1987 s 28 (as amended), the chairman is appointed by the Lord Chancellor and the other members by the Chancellor of the Exchequer: see s 28(2) (as amended).

7 Tribunals and Inquiries Act 1992 s 6(7).

8 Ibid s 6(2).

9 The order is made by statutory instrument by the Lord Chancellor or the Secretary of State and is subject to annulment by a resolution of either House of Parliament: *ibid* s 15 (amended by the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999, SI 1999/678, art 2, Schedule).

10 See the Tribunals and Inquiries Act 1992 s 13(2) (amended by the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999, SI 1999/678, art 2, Schedule).

11 Tribunals and Inquiries Act 1992 s 13(2) (as amended: see note 10 *supra*).

12 Ibid s 13(4).

13 See *ibid* s 1; and paras 55-57 *post*.

14 'The appropriate minister' means, in relation to appointments of any description, the minister making the appointments or, if they are not made by a minister, the minister in charge of the government department concerned with the tribunals in question: *ibid* s 5(2). 'Minister' includes the National Assembly for Wales and any Board presided over by a minister: s 16(1). As to the National Assembly for Wales see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

15 le the tribunals specified in *ibid* s 1, Sch 1 (as amended): see para 57 *post*.

16 Ibid s 5(1). See also para 56 *post*.

17 Ibid s 5(1).

18 le all tribunals specified in the Tribunals and Inquiries Act 1992 Sch 1 (as amended) (see para 57 *post*), with the exception of the following: the Civil Aviation Authority, established under the Civil Aviation Act 1971 s 1 (as amended) (see **AIR LAW** vol 2 (2008) PARA 50 *et seq*); appeal tribunals constituted under the Banking Act 1987 s 28 (as amended); the adjudicators appointed under the Criminal Injuries Compensation Act 1995 s 5; the Information Commissioner, the Data Protection Tribunal and the Information Tribunal constituted under the Data Protection Act 1998 (as amended by the Freedom of Information Act 2000) (see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) para 518 *et seq*); an adjudicator appointed under the School Standards and Framework Act 1998 s 25 (see **EDUCATION** vol 15(1) (2006 Reissue) para 124); the Director-General of Fair Trading and his staff (see the Consumer Credit Act 1974; the Estate Agents Act 1979; and **CONSUMER CREDIT** vol 9(1) (Reissue) para 110 *et seq*); the Financial Services Tribunal constituted under the Financial Services Act 1986 s 96 (as amended); an appeal tribunal constituted under the Friendly Societies Act 1992 s 59 (as amended); the Insolvency Practitioners Tribunal referred to in the Insolvency Act 1986 s 396 (see **BANKRUPTCY AND INDIVIDUAL INSOLVENCY** vol 3(2) (2002 Reissue) paras 60, 72); health authorities established under the National Health Service Act 1977 s 8 (as substituted and amended) (see **HEALTH SERVICES** vol 54 (2008) PARA 94); the National Lottery Commission in respect of certain functions under the National Lottery etc Act 1993 (see **LICENSING AND GAMBLING** vol 67 (2008) PARA 7); the Comptroller-General of Patents, Designs and Trade Marks and any officer carrying out his functions under the Patents and Designs Act 1907 (see **PATENTS AND REGISTERED DESIGNS** vol 79 (2008) PARA 577); the Pensions Ombudsman established under the Pension Schemes Act 1993 Pt X (ss 145-152) (as amended) (see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) para 663 *et seq*); the Occupational Pensions Regulatory Authority established by the Pensions Act 1995 s 1 (see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) para 598); the Pensions Compensation Board established by s 78 (see **SOCIAL SECURITY AND PENSIONS** vol 44(2) (Reissue) para 637); the Controller of Plant Variety Rights and any officer authorised to exercise his functions under the Plant Varieties Act 1997 Sch 1 para 3 (see **AGRICULTURAL PRODUCTION AND MARKETING** vol 1 (2008) para 1217); an appeals tribunal constituted in accordance with the Police Act 1996 s 85, Sch 6 (as amended) or the Police Act 1997 s 38(2) (see **POLICE** vol 36(1) (2007 Reissue) para 300 *et seq*); the Commissioners for the special purposes of the Income Tax Acts (see **INCOME TAXATION** vol 23(1) (Reissue) para 39); and the traffic commissioner for any area constituted for the purposes of the Public Passenger Vehicles Act 1981 (see **ROAD TRAFFIC** vol 40(3) (2007 Reissue) para 1139) or a parking adjudicator appointed under the Road Traffic Act 1991 s 73(3)(a) (see **ROAD TRAFFIC** vol 40(2) (2007 Reissue) para 895); Tribunals and Inquiries Act 1992 s 7(2) (amended by the Police and Magistrates' Courts Act 1994 s 44, Sch 5 Pt II para 39; the Pensions Act 1995 ss 122, 151, 177, Sch 3 para 21(a), Sch 5 para 16(2), Sch 7 Pt III; the Police Act 1996 s 103, Sch 7 para 45; the Police Act 1997 s 134(1), Sch 9 para 69; the Social Security Act 1998 s 86(1),

Sch 7 para 119; the School Standards and Framework Act 1998 s 25, Sch 5 para 10(1); the National Lottery Act 1998 s 1(5), Sch 1 para 12(2)(a); and the Tribunals and Inquiries (Friendly Societies) Order 1993, SI 1993/3258, art 2(a)).

19 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 3.

20 See note 19 supra.

21 Tribunals and Inquiries Act 1992 s 7(1). For the purposes of s 7 (as amended), in its application to adjudicators established under the Immigration and Asylum Act 1999 s 57 (see **BRITISH NATIONALITY AND IMMIGRATION** vol 4(2) (2002 Reissue) para 173), an adjudicator who has sat only in England and Wales, or who has sat only in Scotland, or who has sat only in Northern Ireland, is deemed to constitute a tribunal which does not sit outside England and Wales, Scotland or Northern Ireland, as the case may be: Tribunals and Inquiries Act 1992 s 7(3).

22 See the Reserve Forces (Safeguard of Employment) Act 1985 s 8, Sch 2 para 5 (amended by the Courts and Legal Services Act 1990 s 71(2), Sch 10 para 59) (originally the National Service Act 1948 s 41(4)).

23 Employment Tribunals (Constitution and Rules of Procedure) Regulations 1993, SI 1993/2687, reg 5(1) (a).

UPDATE

13-15 Statutory Tribunals and Public Inquiries

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The Council on Tribunals and the Scottish Committee of the Council on Tribunals are abolished and replaced by the Administrative Justice and Tribunals Council: see ss 44, 45, Sch 7; and PARA 57A.

14-15 Appointment and removal of chairman and members of various tribunals, Public inquiries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see PARA 196A.

14 Appointment and removal of chairman and members of various tribunals

TEXT AND NOTE 4--See Constitutional Reform Act 2005 s 85, Sch 14 Pt 3; and **COURTS** vol 10 (Reissue) PARA 515B.18.

NOTES 6, 18--Banking Act 1987 s 28 repealed: Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001, SI 2001/3649 art 3(1)(d).

TEXT AND NOTES 8, 11--See Constitutional Reform Act 2005 s 19, Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 489A.

NOTE 14--In the definition of 'Minister' for 'National Assembly for Wales' read 'Welsh Ministers': 1992 Act s 16(1) (amended by the Government of Wales Act 2006 Sch 10 para 38).

NOTE 18--Tribunals and Inquiries Act 1992 s 7(2) further amended: Pensions Act 2004 Sch 12 para 8(2); Serious Organised Crime and Police Act 2005 Sch 4 para 61, Sch 17 Pt 2; SI 2001/3649.

TEXT AND NOTE 21--1992 Act s 7(1) amended: Constitutional Reform Act 2005 Sch 4 para 225, Sch 18 Pt 2.

NOTE 21--1992 Act s 7(3) repealed: Asylum and Immigration (Treatment of Claimants, etc) Act 2004 Sch 2 para 7(2).

NOTE 23--SI 1993/2687 reg 5(1)(a) now Employment Tribunals (Constitution and Rules of Procedure) Regulations 2004, SI 2004/1861, reg 8(1), (3)(a) (reg 8(3)(a) amended by SI 2008/2683, SI 2008/2771). See also Constitutional Reform Act 2005 s 85, Sch 14 Pt 3 (amended by SI 2006/678).

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(ii) Public Inquiries

15. Public inquiries.

For the purposes of the Tribunals and Inquiries Act 1992, a statutory inquiry means an inquiry or hearing held or to be held in pursuance of a duty imposed by any statutory provision or an inquiry or hearing, or an inquiry or hearing of a class, designated by an order made by the Lord Chancellor and the Secretary of State¹. One of the functions of the Council on Tribunals² is to consider and report on such matters as may be referred to it, or as the Council may determine to be of special importance, with respect to administrative procedures involving, or which may involve, the holding by or on behalf of a minister³ of a statutory inquiry, or any such procedure⁴.

Such statutory inquiries are provided for in numerous Acts, in particular those concerning town and country planning⁵. After consultation with the Council on Tribunals⁶, the Lord Chancellor may make rules regulating the procedure to be followed in connection with statutory inquiries held by or on behalf of ministers⁷, and different provision may be made by any such rules in relation to different classes of such inquiries⁸. Any such rules may regulate procedure in connection with matters preparatory to statutory inquiries held by or on behalf of a minister, and in connection with matters subsequent to such inquiries, as well as in connection with the conduct of proceedings at such inquiries⁹. Any such rules have effect, in relation to any statutory inquiry, subject to the provisions of the enactment under which the inquiry is held and of any rules or regulations made under that enactment¹⁰.

The term 'public inquiries' (or 'public local inquiries') is commonly used to describe both statutory inquiries subject to the Tribunals and Inquiries Act 1992 and similar inquiries or hearings provided for in specific enactments but outside the scope of that Act¹¹. Certain statutory provisions relating to the summoning and attendance of witnesses, the giving of evidence, the production of documents and the defraying of costs of inquiries are made

applicable to many public inquiries¹². Detailed codes of procedure apply to certain types of public inquiries¹³. Circulars issued by departments of the central government have also influenced aspects of the conduct of public inquiries¹⁴.

It is difficult to fit different kinds of public inquiry into clearly defined categories, but from numerous judicial decisions it is possible to derive a significant distinction between two broad categories. In the first category are, for example, inquiries concerned with objections which have been raised against orders submitted by local or public authorities for confirmation. In the case of such an inquiry, though there is not strictly a *lis inter partes*, because the interests of the public are concerned, and the minister's ultimate decision is purely administrative¹⁵, he does act in a loosely quasi-judicial manner when considering the respective representations of authority and objectors and considering the inspector's report. Thus, subject to particular statutory provisions, he must not for example discuss the case with one party without telling the other¹⁶. In the second category are inquiries where the minister himself is the promoter of an order or scheme, or where the inquiry is in substance a channel for providing information for the minister, when the inquiry is regarded as still further removed from a *lis inter partes* and the standard of what fairness requires is modified accordingly, although the basic obligation to act fairly remains¹⁷.

Public inquiries, of whatever category, must be distinguished from alternative procedures for the holding of inquiries through or on behalf of departments or authorities of the central government. Reference has been made to tribunals of inquiry set up for particular purposes under the Tribunals of Inquiry (Evidence) Act 1921¹⁸. Other methods of investigations, which are outlined in the Report of the Royal Commission on Tribunals of Inquiry¹⁹, include royal commissions, select parliamentary committees of inquiry, departmental inquiries and formal inquiries into air accidents and shipping casualties²⁰.

1 Tribunals and Inquiries Act 1992 s 16(1), (2) (amended by the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999, SI 1999/678, art 2(1), Schedule). As to the office of Lord Chancellor see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 477 et seq. As to the Secretary of State see para 13 note 11 ante. Orders have been made bringing numerous types of inquiries within the scope of statutory inquiries: see eg the Tribunals and Inquiries (Discretionary Inquiries) Order 1975, SI 1975/1379 (amended by SI 1976/293; SI 1983/1287; SI 1990/526; and SI 1992/2171).

2 See para 55 post.

3 For the meaning of 'minister' see para 14 note 14 ante.

4 Tribunals and Inquiries Act 1992 s 1(1)(b), (c).

5 The Tribunals and Inquiries Act 1992 is expressly applied to certain types of inquiry under the Town and Country Planning Act 1990. See further, for example, the Town and Planning Act 1990 s 16(3) (as amended) (inquiries with respect to local plans); and **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) para 165. Cf the rules governing the regulation and procedures with respect to Planning Inquiry Commissions contained in s 101, Sch 8 (as amended) (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) para 704 et seq). Rules governing inquiries relating to the making by ministers of compulsory purchase orders under various enactments are contained in the Compulsory Purchase by Ministers (Inquiries Procedure) Rules 1994, SI 1994/3264: see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 575 et seq. See also *R (Wagstaff) v Secretary of State for Health* [2001] 1 WLR 292, sub nom *R v Secretary of State for Health, ex p Wagstaff* (2000) 56 BMLR 199, (2000) Times, 31 August, CA (inquiry set up under the National Health Service Act 1977 s 84 into activities of general practitioner who had murdered 15 patients; Secretary of State's decision to hold that inquiry in private held irrational).

6 See para 56 post.

7 Rules made by the Lord Chancellor under this provision include eg the Transport and Works (Inquiries Procedure) Rules 1992, SI 1992/2817 (see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) para 312); the Public Libraries (Inquiries Procedure) Rules 1992, SI 1992/1627 (see **NATIONAL CULTURAL HERITAGE** vol 77 (2010) PARA 916 et seq); the Highways (Inquiries Procedure) Rules 1994, SI 1994/3263 (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) para 915 et seq); the Compulsory Purchase by Ministers (Inquiries Procedure) Rules 1994, SI 1994/3264 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 575 et seq); and the Town and Country Planning (Inquiries Procedure) Rules 2000, SI 2000/1624.

8 Tribunals and Inquiries Act 1992 s 9(1).

9 Ibid s 9(3).

10 Ibid s 9(2).

11 Public inquiries are especially common in relation to the procedure for orders authorising the compulsory acquisition of land, or orders or schemes affecting generally the development of land, or relating to kindred matters.

12 Local Government Act 1972 s 250 (amended by the Housing and Planning Act 1986 s 49(2), Sch 12 Pt III; the Statute Law (Repeals) Act 1989; and by virtue of the Criminal Justice Act 1982 ss 37, 38, 46); Fees for Inquiries (Standard Daily Amount) (England) Regulations 2000, SI 2000/2307. The provisions in the Local Government Act 1972 s 250 (as amended) apply by virtue either of s 250 (as amended) (for example to inquiries held by the Secretary of State under the Local Government Act 1929 or the Ferries (Acquisition by Local Authorities) Act 1919: see the Local Government Act 1972 s 250(6)), or of express provisions applying them in whole or in part, contained in enactments conferring power to hold inquiries: see eg the Education Act 1996 s 507; the Local Authority Social Services Act 1970 s 7C(2) (as added) (see **SOCIAL SERVICES AND COMMUNITY CARE** vol 44(2) (Reissue) para 1011); the Electricity Act 1989 s 62(2) (see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) para 1299); the Children Act 1989 s 81(4); the Town and Country Planning Act 1990 s 320 (see **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) para 651); the Local Government Act 1972 s 61(2) (as amended) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 85); and the Clean Air Act 1993 ss 59(2), 67(2), Sch 5 Pt III para 16 (see **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 63).

13 See note 7 supra. See also *Lord Luke of Pavenham v Minister of Housing and Local Government* [1968] 1 QB 172 at 184, [1967] 1 All ER 351 at 357 per Lawton J (revsd on appeal [1968] 1 QB 172, [1967] 2 All ER 1066, CA); *Givaudan & Co Ltd v Minister of Housing and Local Government* [1966] 3 All ER 696, [1967] 1 WLR 250. See also para 62 post.

14 See eg Ministry of Housing and Local Government circular 9/1958 and Ministry of Education circular 2/1960 (relating to the availability of reports of inspectors). As to inspectors' reports see *Local Government Board v Arlidge* [1915] AC 120, HL; *William Denby & Sons Ltd v Minister of Health* [1936] 1 KB 337, DC; and the *Report of the Committee on Administrative Tribunals and Enquiries* (Cmd 218) (1957) ch 23. See also Ministry of Housing and Local Government circular 73/1965 (relating to costs at certain public inquiries); and the *Report of the Council on Tribunals on Award of Costs at Statutory Inquiries* (Cmd 2471) (1964); *Annual Reports of the Council on Tribunals* for 1969-70, HC Paper no 72 paras 81-85, and for 1970-71, HC Paper no 26 paras 84-89. See also *R v Secretary of State for the Environment, ex p Reinisch* (1971) 22 P & CR 1022, DC, on the propriety of the Secretary of State's general policy of not awarding costs against a party to an inquiry unless that party has behaved unreasonably.

15 *B Johnson & Co (Builders) Ltd v Minister of Health* [1947] 2 All ER 395 at 399, CA, per Lord Greene MR; *Bushell v Secretary of State for the Environment* [1981] AC 75 at 101-102, [1980] 2 All ER 608 at 617-618, HL, per Lord Diplock. See also *Innisfil Township v Vespra Township* (1981) 123 DLR (3d) 530.

16 *Errington v Minister of Health* [1935] 1 KB 249, CA. See also *R v Minister of Transport, ex p Grey Coaches Ltd* (1933) 77 Sol Jo 301; *William Denby & Sons Ltd v Minister of Health* [1936] 1 KB 337, DC; *Frost v Minister of Health* [1935] 1 KB 286; *Re Manchester (Ringway Airport) Compulsory Purchase Order 1934* (1935) 153 LT 219; *Offer v Minister of Health* [1936] 1 KB 40, CA; *Horn v Minister of Health* [1937] 1 KB 164, [1936] 2 All ER 1299, CA; *Stafford v Minister of Health* [1946] KB 621; *B Johnson & Co (Builders) Ltd v Minister of Health* [1947] 2 All ER 395, CA; *Miller v Minister of Health* [1946] KB 626; *Price v Minister of Health* [1947] 1 All ER 47; *Summers v Minister of Health* [1947] 1 All ER 184; *R v Manchester Legal Aid Committee, ex p RA Brand & Co Ltd* [1952] 2 QB 413 at 429, [1952] 1 All ER 480 at 489, DC, per Parker J; *Darlasis v Minister of Education* (1954) 4 P & CR 281; *Steele v Minister of Housing and Local Government and West Ham County Borough Council* (1956) 6 P & CR 386, CA; *General Poster and Publicity Co Ltd v Secretary of State for Scotland and East Lothian County Council* [1960] SC 266; *Nelsovil Ltd v Minister of Housing and Local Government* [1962] 1 All ER 423, [1962] 1 WLR 404, DC; *Wednesbury Corp v Ministry of Housing and Local Government* [1965] 1 All ER 186, [1965] 1 WLR 261, CA; *Wednesbury Corp v Ministry of Housing and Local Government (No 2)* [1966] 2 QB 275, [1965] 3 All ER 571, CA.

17 *Franklin v Minister of Town and Country Planning* [1948] AC 87, [1947] 2 All ER 289, HL; see also *Re Trunk Roads Act 1936, Re London-Portsmouth Trunk Road (Surrey) Compulsory Purchase Order (No 2)* [1938] [1939] 2 KB 515, [1939] 2 All ER 464, DC; *Re City of Plymouth (City Centre) Declaratory Order 1946*, *Robinson v Minister of Town and Country Planning* [1947] KB 702, [1947] 1 All ER 851, CA; *R v Manchester Legal Aid Committee, ex p RA Brand & Co Ltd* [1952] 2 QB 413, [1952] 1 All ER 480, DC; *Wednesbury Corp v Ministry of Housing and Local Government* [1965] 1 All ER 186, [1965] 1 WLR 261, CA; *Wednesbury Corp v Ministry of Housing and Local Government (No 2)* [1966] 2 QB 275, [1965] 3 All ER 571, CA; *Bushell v Secretary of State for*

the Environment[1981] AC 75, [1980] 2 All ER 608, HL. As to natural justice and fairness generally see para 95 post.

18 See para 13 ante.

19 The *Report of the Royal Commission on Tribunals of Inquiry* (Cmnd 3121) (1966) paras 33-45.

20 Eg inquiries under the Civil Aviation (Investigation of Air Accidents and Incidents) Regulations 1996, SI 1996/2798 (as amended) (see **AIR LAW** vol 2 (2008) PARA 602 et seq); and the Merchant Shipping (Formal Investigations) Rules 1985, SI 1985/1001 (as amended) (see **SHIPPING AND MARITIME LAW** vol 93 (2008) PARA 557).

UPDATE

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Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see PARA 196A.

15 Public inquiries

TEXT AND NOTES--As to inquiries generally see the Inquiries Act 2005; and PARA 15A.

NOTE 1--SI 1975/1379 further amended: SI 2004/3168 (England), SI 2005/2929 (Wales).

TEXT AND NOTE 4--1992 Act s 1 repealed: Tribunals, Courts and Enforcement Act 2007 s 45(2), Sch 23 Pt 1.

NOTE 5--Where there are no statutory or procedural rules governing a planning control committee meeting, the court is entitled to quash the decision where the facts disclose a procedural unfairness: *R (on the application of Tromans) v Cannock Chase DC* [2004] EWCA Civ 1036, [2004] JPL 338.

NOTE 7--SI 2000/1624 replaced by Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115 (amended by SI 2008/2831). See also the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266 (amended by SI 2007/2285).

TEXT AND NOTE 8--See Constitutional Reform Act 2005 s 19, Sch 7 para 4; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 489A.

NOTE 12--See also Fees for Inquiries (Standard Daily Amount) (Wales) Regulations 2002, SI 2002/2780.

TEXT AND NOTE 18--1921 Act repealed: Inquiries Act 2005 s 49, Sch 3.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/1. INTRODUCTION/(4) STATUTORY TRIBUNALS AND PUBLIC INQUIRIES/(ii) Public Inquiries/15A. Inquiries.

15A. Inquiries.

1. Constitution of inquiries

A minister¹ may cause an inquiry² to be held in relation to a case where it appears to him that particular events³ have caused, or are capable of causing, public concern, or there is public concern that particular events may have occurred⁴. Such an inquiry must be undertaken either by a chairman⁵ alone, or by a chairman with one or more other members⁶. Each member of an inquiry panel must be appointed by the minister by an instrument in writing⁷. Before appointing a member to the inquiry panel, otherwise than as chairman, the minister must consult the person he has appointed, or proposes to appoint, as chairman⁸. In appointing a member of the inquiry panel, the minister must have regard to the need to ensure that the inquiry panel considered as a whole has the necessary expertise to undertake the inquiry⁹ and, in the case of an inquiry panel consisting of a chairman and one or more other members, to the need for balance, considered against the background of the terms of reference, in the composition of the panel¹⁰.

A minister who proposes to cause an inquiry to be held, or who has already done so without making a statement in the prescribed manner¹¹, must as soon as is reasonably practicable make such a statement¹² to the relevant Parliament or Assembly¹³.

The minister may at any time, whether before the setting-up date or during the course of the inquiry, appoint a member to the inquiry panel to fill a vacancy that has arisen in the panel, including a vacancy in the position of chairman¹⁴, or to increase the number of members of the panel¹⁵.

If the minister proposes to appoint as a member of an inquiry panel a Lord of Appeal in Ordinary, he must first consult the senior Lord of Appeal in Ordinary, and if the minister proposes to appoint a judge of the Supreme Court or a circuit judge, he must first consult the Lord Chief Justice¹⁶.

One or more persons may be appointed to act as assessors to assist the inquiry panel¹⁷. The power to appoint assessors is exercisable before the setting-up date, by the minister¹⁸, and during the course of the inquiry, by the chairman, whether or not the minister has appointed assessors¹⁹. A person may be appointed as an assessor only if it appears to the minister or the chairman, as the case requires, that he has expertise that makes him a suitable person to provide assistance to the inquiry panel²⁰. The chairman may at any time terminate the appointment of an assessor, but only with the consent of the minister in the case of an assessor appointed by the minister²¹.

A member of an inquiry panel remains a member until the inquiry comes to an end, or until his death if he dies before then²², but may at any time resign his appointment by notice²³ to the

minister²⁴. Also, the minister may at any time terminate the appointment of a member of an inquiry panel (1) on the ground that, by reason of physical or mental illness or for any other reason, the member is unable to carry out the duties of a member of the inquiry panel²⁵; (2) on the ground that the member has failed to comply with any duty imposed on him²⁶; (3) on the ground that the member has a direct interest in the matters to which the inquiry relates, or a close association with an interested party, such that his membership of the inquiry panel could reasonably be regarded as affecting its impartiality²⁷; (4) on the ground that the member has, since his appointment, been guilty of any misconduct that makes him unsuited to membership of the inquiry panel²⁸. Before exercising his powers of termination in relation to a member other than the chairman, the minister must consult the chairman²⁹.

The minister may at any time, by notice³⁰ to the chairman, suspend an inquiry for such period as appears to him to be necessary to allow for the completion of any other investigation relating to any of the matters to which the inquiry relates, or the determination of any civil or criminal proceedings, including proceedings before a disciplinary tribunal, arising out of any of those matters³¹. During any period of suspension³², a member of an inquiry panel may not exercise his powers³³, but the duties in relation to impartiality imposed on a member of an inquiry panel³⁴ continue during any such period³⁵.

For these purposes, an inquiry comes to an end (a) on the date, after the delivery of the report of the inquiry³⁶, on which the chairman notifies the minister that the inquiry has fulfilled its terms of reference³⁷; or (b) on any earlier date specified in a notice³⁸ given to the chairman by the minister³⁹.

An application for judicial review⁴⁰ of a decision made by the minister in relation to an inquiry or by a member of an inquiry panel must be brought within 14 days after the day on which the applicant became aware of the decision, unless that time limit is extended by the court⁴¹.

1 'Minister' means a United Kingdom minister or the Welsh Ministers: Inquiries Act 2005 s 1(2) (amended by Government of Wales Act 2006 Sch 10 para 90). 'United Kingdom minister' means the holder of a ministerial office specified in the Ministerial and other Salaries Act 1975 Sch 1 Pt I, II or III (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 423) or a Parliamentary Secretary, and also includes the Treasury: 2005 Act s 43(1).

2 'Inquiry', except where the context requires otherwise, means an inquiry under the 2005 Act: ss 1(3), 43(1).

3 'Event', except in *ibid* s 13 (see TEXT AND NOTES 30-35), includes any conduct or omission: s 43(1).

4 *Ibid* s 1(1).

5 'Chairman', in relation to an inquiry, means the chairman of the inquiry: *ibid* s 43(1).

6 *Ibid* s 3(1). 'Member', in relation to an inquiry panel, includes the chairman: s 43(1). References to an inquiry panel are to the chairman and any other member or members: s 3(2). An inquiry panel must not rule on, and has no power to determine, any person's civil or criminal liability, but is not to be inhibited in the discharge of its functions by any likelihood of liability being inferred from facts that it determines or recommendations that it makes: s 2.

7 *Ibid* s 4(1). The instrument appointing the chairman must state that the inquiry is to be held under the 2005 Act: s 4(2). In the instrument appointing the chairman, or by a notice given to him within a reasonable time afterwards, the minister must specify the date that is to be the setting-up date for the purposes of the 2005 Act and, before that date, set out the terms of reference of the inquiry and state whether or not he proposes to appoint other members to the inquiry panel, and if so how many: s 5(1). 'Terms of reference', in relation to an inquiry under the 2005 Act, means (1) the matters to which the inquiry relates; (2) any particular matters as to which the inquiry panel is to determine the facts; (3) whether the inquiry panel is to make recommendations; and (4) any other matters relating to the scope of the inquiry that the minister may specify: s 5(6). An inquiry must not begin considering evidence before the setting-up date: s 5(2). The minister may at any time after setting out the terms of reference amend them if he considers that the public interest so requires, and before setting out or amending the terms of reference he must consult the person he proposes to appoint, or has appointed, as chairman: s 5(3), (4). Functions conferred by the 2005 Act on an inquiry panel, or a member of an inquiry panel, are exercisable only within the inquiry's terms of reference: s 5(5).

8 Ibid s 4(3).

9 Ibid s 8(1)(a). For these purposes, the minister may have regard to the assistance that may be provided to the inquiry panel by any assessor whom the minister proposes to appoint, or has appointed, under s 11 (see TEXT AND NOTES 17-21): s 8(2).

10 Ibid s 8(1)(b). The minister must not appoint a person as a member of the inquiry panel if it appears to the minister that the person has a direct interest in the matters to which the inquiry relates or a close association with an interested party unless, despite the person's interest or association, his appointment could not reasonably be regarded as affecting the impartiality of the inquiry panel: s 9(1). 'Interested party', in relation to an inquiry, means a person with a particularly significant interest in the proceedings or outcome of the inquiry: s 43(1). Before a person is appointed as a member of an inquiry panel he must notify the minister of any matters that, having regard to s 9(1), could affect his eligibility for appointment, and if at any time, whether before the setting-up date or during the course of the inquiry, a member of the inquiry panel becomes aware that he has an interest or association falling within s 9(1), he must notify the minister: s 9(2), (3). References in the 2005 Act to the course of an inquiry are to the period beginning with the setting-up date or, in the case of an inquiry converted under s 15 (see PARA 15A.2), the date of conversion, and ending with the date on which the inquiry comes to an end under s 14 (see TEXT AND NOTES 36-39): s 43(2). A notification under the 2005 Act must be given in writing: s 42. A member of the inquiry panel must not, during the course of the inquiry, undertake any activity that could reasonably be regarded as affecting his suitability to serve as such: s 9(4).

11 le the manner prescribed by ibid s 6.

12 Such a statement, which may be oral or written, must state (1) who is to be, or has been, appointed as chairman of the inquiry; (2) whether the minister has appointed, or proposes to appoint, any other members to the inquiry panel, and if so how many; and (3) what are to be, or are, the inquiry's terms of reference: ibid s 6(2), (4). Where the terms of reference of an inquiry are amended under s 5(3), the minister must, as soon as is reasonably practicable, make a statement to the relevant Parliament or Assembly setting out the amended terms of reference: s 6(3). 'The relevant Parliament or Assembly' means whichever is or are applicable of (a) in the case of an inquiry for which the Treasury is responsible, the House of Commons; (b) in the case of an inquiry for which any other United Kingdom minister is responsible, the House of Parliament of which that minister is a member; (c) in the case of an inquiry for which the Welsh Ministers are responsible, the National Assembly for Wales: s 43(1) ((amended by the 2006 Act Sch 10 para 96). For the purposes of the 2005 Act a minister is responsible for an inquiry if he is the minister, or one of the ministers, by whom it was caused to be held under s 1 or converted under s 15 (see PARA 15A.2): s 43(5)

13 Ibid s 6(1).

14 Ibid s 7(1)(a). The power to appoint a replacement chairman may be exercised by appointing a person who is already a member of the inquiry panel: s 7(3).

15 Ibid s 7(1)(b). The power to appoint a member to increase the number of members of the panel is exercisable only in accordance with a proposal under s 5(1)(b)(ii) (see NOTE 7), or with the consent of the chairman: s 7(2).

16 Ibid s 10(1).

17 Ibid s 11(1).

18 Ibid s 11(2)(a). Before exercising his powers under s 11(2)(a) the minister must consult the person he proposes to appoint, or has appointed, as chairman: s 11(3).

19 Ibid s 11(2)(b).

20 Ibid s 11(4).

21 Ibid s 11(5).

22 Ibid s 12(1).

23 A notice under the 2005 Act must be given in writing: s 42.

24 Ibid s 12(2).

25 Ibid s 12(3)(a). In determining whether this ground applies in a case where the inability to carry out the duties is likely to be temporary, the minister may have regard to the likely duration of the inquiry: s 12(4).

26 Ibid s 12(3)(b).

27 Ibid s 12(3)(c). The minister may not terminate a member's appointment on this ground if the minister was aware of the interest or association in question when appointing him: s 12(5).

28 Ibid s 12(3)(d).

29 Ibid s 12(6). Before exercising his powers of termination in relation to any member of the inquiry panel, the minister must inform the member of the proposed decision and of the reasons for it, and take into account any representations made by the member in response, and, if the member so requests, consult the other members of the inquiry panel, to the extent that no obligation to consult them arises under s 12(6): s 12(7).

30 Such a notice may suspend the inquiry until a specified day, until the happening of a specified event or until the giving by the minister of a further notice to the chairman: ibid s 13(4). Where the minister gives such a notice he must set out in it his reasons for suspending the inquiry and lay a copy of it, as soon as is reasonably practicable, before the relevant Parliament or Assembly: s 13(5).

31 Ibid s 13(1). Such a power must be exercised whether or not the investigation or proceedings have begun, and before exercising such a power the minister must consult the chairman: s 13(2), (3).

32 'Period of suspension' means the period beginning with the receipt by the chairman of the notice under ibid s 13(1) and ending with whichever is applicable of (1) the day referred to in s 13(4); (2) the happening of the event referred to in s 13(4); (3) the receipt by the chairman of the further notice under s 13(4): s 13(7).

33 Ie the powers conferred by the 2005 Act.

34 Ie the duties imposed by ibid s 9(3), (4) (see NOTE 10).

35 Ibid s 13(6).

36 As to inquiry reports see PARA 15A.4.

37 2005 Act s 14(1)(a).

38 The date specified in such a notice may not be earlier than the date on which the notice is sent: ibid s 14(2). Where the minister gives such a notice he must set out in it his reasons for bringing the inquiry to an end and lay a copy of the notice, as soon as is reasonably practicable, before the relevant Parliament or Assembly: s 14(4).

39 Ibid s 14(1)(b). Before exercising his power under s 14(1)(b) the minister must consult the chairman: s 14(3).

40 As to judicial review see PARA 58 et seq.

41 2005 Act s 38(1). Section 38(1) does not apply where an earlier time limit applies by virtue of the CPR (see generally **CIVIL PROCEDURE**), and does not apply to a decision as to the contents of the report or an interim report of the inquiry, or a decision of which the applicant could not have become aware until the publication of the report or an interim report: s 38(2), (3). As to reports and interim reports see PARA 15A.4.

2. Conversion of inquiries

Where an inquiry¹ ('the original inquiry') relates to a case where it appears to the minister² that particular events³ have caused, or are capable of causing, public concern, or there is public concern that particular events may have occurred, the original inquiry may become a prescribed inquiry⁴. The original inquiry may only become a prescribed inquiry where (1) it is being held, or is due to be held, by one or more persons appointed otherwise than in the prescribed manner⁵; (2) a minister gives a notice⁶ to those persons; and (3) the person who caused the original inquiry to be held consents⁷. The minister must consult the chairman before setting out terms of reference that are different from those of the original inquiry or amending the terms of reference⁸.

Any obligation arising under an order of the original inquiry, or otherwise in connection with that inquiry, is enforceable only as it would be if the original inquiry had not been converted⁹.

1 For the meaning of 'inquiry' see PARA 15A.1 NOTE 2.

2 For the meaning of 'minister' see PARAA 15A.1 NOTE 1.

3 For the meaning of 'event' see PARA 15A.1 NOTE 3.

4 Ie an inquiry under the Inquiries Act 2005: s 15(2).

5 Ie otherwise than under the 2005 Act.

6 Ie a notice under ibid s 15. Such a notice must state that (1) as from the date of conversion, the inquiry is to be held under the 2005 Act; (2) in the case of an inquiry panel consisting of more than one member, identify who is to be chairman of the panel; and (3) set out what are to be the terms of reference of the inquiry: s 15(4). As to inquiry panels, and for the meaning of 'member', see PARA 15A.1 NOTE 6. For the meaning of 'chairman' see PARA 15A.1 NOTE 5. For the meaning of 'terms of reference' see PARA 15A.1 NOTE 7. The terms of reference set out may be different from those of the original inquiry, and the minister may at any time after setting out the terms of reference amend them if he considers that the public interest so requires: s 15(5), (6). Before exercising a power under s 15 the minister must consult the chairman: s 15(3).

Section 6 (see PARA 15A.1 TEXT AND NOTES 11-13) applies, with any necessary modifications, in relation to converting an inquiry or amending an inquiry's terms of reference, as it applies in relation to causing an inquiry to be held, or amending an inquiry's terms of reference under s 5(3) (see PARA 15A.1 NOTE 7): s 15(8).

7 Ibid s 15(1). The original inquiry becomes an inquiry under the 2005 Act as from the date of the notice or such later date as may be specified in the notice ('the date of conversion'): s 15(1) proviso. Where the original inquiry has been so converted, the appointment of a person who at the date of conversion is (1) one of the persons holding, or due to hold, the original inquiry; (2) an assessor, counsel or solicitor to the inquiry; or (3) a person engaged to provide assistance to the inquiry continues as if made under the 2005 Act, and for the purposes of s 12(5) (see PARA 15A.1 NOTE 27) is to be treated as made by the minister on the date of conversion: s 16(1), (2). As to assessors see PARA 15A.1 TEXT AND NOTES 17-21.

8 Ie under ibid s 15(6): s 15(7).

9 Ibid s 16(3). No rights or obligations arise under or by virtue of the 2005 Act before the date of conversion: s 16(4).

3. Inquiry proceedings

The procedure and conduct of an inquiry¹ are to be such as the chairman² of the inquiry may direct³. In particular, the chairman may take evidence on oath, and for that purpose may administer oaths⁴.

Restrictions may be imposed on attendance at an inquiry, or at any particular part of an inquiry, and on disclosure or publication of any evidence or documents⁵ given, produced or provided to an inquiry⁶, and may be imposed by being specified in a restriction notice⁷ given by the minister to the chairman at any time before the end of the inquiry, and/or by being specified in a restriction order⁸ made by the chairman during the course of the inquiry⁹. A restriction notice or restriction order must specify only such restrictions as are required by any statutory provision¹⁰, enforceable Community obligation or rule of law, or as the minister or chairman considers to be conducive to the inquiry fulfilling its terms of reference¹¹ or to be necessary in the public interest, and having regard in particular to the matters specified¹². After the end of an inquiry the minister may, by a notice published in a way that he considers suitable, revoke a restriction order or restriction notice containing disclosure restrictions that are still in force or vary it so as to remove or relax any of the restrictions¹³.

Subject to any such restrictions, the chairman must take such steps as he considers reasonable to secure that members of the public, including reporters, are able to attend the inquiry or to see and hear a simultaneous transmission of proceedings at the inquiry and to obtain or view a record of evidence and documents given, produced or provided to the inquiry or inquiry panel¹⁴. However, no recording or broadcast of proceedings at an inquiry may be made except at the request of the chairman or with the permission of the chairman and in accordance with any terms on which permission is given, and any such request or permission must be framed so as

not to enable a person to see or hear by means of a recording or broadcast anything that he is prohibited¹⁵ from seeing or hearing¹⁶.

The chairman of an inquiry may by notice require a person to attend at a time and place stated in the notice (1) to give evidence; (2) to produce any documents in his custody or under his control that relate to a matter in question at the inquiry; (3) to produce any other thing in his custody or under his control¹⁷ for inspection, examination or testing by or on behalf of the inquiry panel¹⁸. The chairman may also by notice require a person, within such period as appears to the inquiry panel to be reasonable, (a) to provide evidence to the inquiry panel in the form of a written statement; (b) to provide any documents in his custody or under his control that relate to a matter in question at the inquiry; (c) to produce any other thing in his custody or under his control for inspection, examination or testing by or on behalf of the inquiry panel¹⁹. A claim by a person that he is unable to comply with either such notice, or that it is not reasonable in all the circumstances to require him to comply with either such notice, is to be determined by the chairman of the inquiry, who may revoke or vary the notice on that ground²⁰.

Where it is submitted to an inquiry panel on behalf of the Crown²¹, the Financial Services Authority²² or the Bank of England²³ that there is information held by any person which, in order to avoid a risk of damage to the economy²⁴, ought not to be revealed²⁵, the panel must not permit or require the information to be revealed, or cause it to be revealed, unless satisfied that the public interest in the information being revealed outweighs the public interest in avoiding a risk of damage to the economy²⁶. However, this does not prevent the inquiry panel from communicating any information in confidence to the minister²⁷.

1 For the meaning of 'inquiry' see PARA 15A.1 NOTE 2.

2 For the meaning of 'chairman' see PARA 15A.1 NOTE 5.

3 Inquiries Act 2005 s 17(1). In making any decision as to the procedure or conduct of an inquiry, the chairman must act with fairness and with regard also to the need to avoid any unnecessary cost, whether to public funds or to witnesses or others: s 17(3).

4 Ibid s 17(2).

5 Restrictions imposed on disclosure or publication of evidence or documents ('disclosure restrictions') continue in force indefinitely unless under the terms of the relevant notice or order the restrictions expire at the end of the inquiry, or the relevant notice or order is varied or revoked under *ibid* s 20(3), (4) or (7): s 20(5). 'Document' includes information recorded in any form, and references to producing or providing a document, in relation to information recorded otherwise than in legible form, are to be read as references to producing or providing a copy of the information in a legible form: s 43(1), (3). After the end of an inquiry, disclosure restrictions do not apply to a public authority in relation to information held by the authority otherwise than as a result of the breach of any such restrictions: s 20(6). 'Public authority' has the same meaning as in the Freedom of Information Act 2000 (see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583): 2005 Act s 43(1).

6 Ibid s 19(1).

7 Restrictions specified in a restriction notice have effect in addition to any already specified, whether in an earlier restriction notice or in a restriction order: *ibid* s 20(1). The minister may vary or revoke a restriction notice by giving a further notice to the chairman at any time before the end of the inquiry: s 20(3). For the meaning of 'minister' see PARA 15A.1 NOTE 1.

8 Restrictions specified in a restriction order have effect in addition to any already specified, whether in an earlier restriction order or in a restriction notice: 2005 Act s 20(2). The chairman may vary or revoke a restriction order by making a further order during the course of the inquiry: s 20(4).

9 Ibid s 19(2).

10 'Statutory provision' means a provision contained in or having effect under any enactment: *ibid* s 43(1).

11 For the meaning of 'terms of reference' see PARA 15A.1 NOTE 7.

12 2005 Act s 19(3). The matters specified are (1) the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern; (2) any risk of harm or damage that could be avoided or reduced by any such restriction; (3) any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given, to the inquiry; (4) the extent to which not imposing any particular restriction would be likely to cause delay or impair the efficiency or effectiveness of the inquiry or otherwise result in additional cost, whether to public funds or to witnesses or others: s 19(4). 'Harm or damage' includes in particular death or injury, damage to national security or international relations, damage to the economic interests of the United Kingdom or any part of the United Kingdom, and damage caused by disclosure of commercially sensitive information: s 19(5).

13 Ibid s 20(7).

14 Ibid s 18(1). As to inquiry panels see PARA 15A.1 NOTE 6.

15 le by a notice under ibid s 19.

16 Ibid s 18(2).

17 A thing is under a person's control if it is in his possession or if he has a right to possession of it: ibid s 21(6).

18 Ibid s 21(1). A person may not be required to give, produce or provide any evidence or document if he could not be required to do so if the proceedings of the inquiry were civil proceedings in a court or if the requirement would be incompatible with a Community obligation: s 22(1). The rules of law under which evidence or documents are permitted or required to be withheld on grounds of public interest immunity (see **CIVIL PROCEDURE** vol 11 (2009) PARA 574 et seq) apply in relation to an inquiry as they apply in relation to civil proceedings in a court: s 22(2).

19 Ibid s 21(2). A notice under s 21(1) or (2) must explain the possible consequences of not complying with the notice and indicate what the recipient of the notice should do if he wishes to make a claim under s 21(4): s 21(3).

20 Ibid s 21(4). In deciding whether to revoke or vary a notice on the ground that it is not reasonable in all the circumstances to require the person to comply with it, the chairman must consider the public interest in the information in question being obtained by the inquiry, having regard to the likely importance of the information: s 21(5).

21 As to the Crown see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) PARA 353.

22 As to the Financial Services Authority see **FINANCIAL SERVICES AND INSTITUTIONS** vol 48 (2008) PARA 4 et seq.

23 As to the Bank of England see **FINANCIAL SERVICES AND INSTITUTIONS** vol 49 (2008) PARA 793 et seq.

24 'Damage to the economy' means damage to the economic interests of the United Kingdom or any part of the United Kingdom: 2005 Act s 23(4).

25 'Revealed' means revealed to anyone who is not a member of the inquiry panel: ibid s 23(4). For the meaning of 'member' see PARA 15A.1 NOTE 6.

26 Ibid s 23(1), (2). In making such a decision the panel must take account of any restriction notice given or any restriction order that the chairman has made or proposes to make: s 23(3).

27 Ibid s 23(6). It also does not affect the rules of law referred to in s 22(2) (see NOTE 18).

4. Inquiry reports

The chairman¹ of the inquiry² must deliver a report to the minister³ setting out the facts determined by the inquiry panel⁴ and the recommendations of the panel, where the terms of reference⁵ required it to make recommendations, and which may also contain anything else that the panel considers to be relevant to the terms of reference, including any recommendations the panel sees fit to make despite not being required to do so by the terms of reference⁶. Before making such a report the chairman may deliver to the minister an interim report containing anything that a report may contain⁷.

A report or interim report of an inquiry must be signed by each member⁸ of the inquiry panel, and if the inquiry panel is unable to produce a unanimous report or interim report, the report or interim report must reasonably reflect the points of disagreement⁹.

It is the duty of the minister to arrange for reports¹⁰ of an inquiry to be published¹¹. A report of an inquiry must be published in full¹². However, the person whose duty it is to arrange for a report to be published may withhold material in the report from publication to such extent (1) as is required by any statutory provision¹³, enforceable Community obligation or rule of law¹⁴; or (2) as the person considers to be necessary in the public interest, having regard in particular to the matters specified¹⁵.

1 For the meaning of 'chairman' see PARA 15A.1 NOTE 5.

2 For the meaning of 'inquiry' see PARA 15A.1 NOTE 2.

3 For the meaning of 'minister' see PARA 15A.1 NOTE 1.

4 As to inquiry panels see PARA 15A.1 NOTE 6.

5 For the meaning of 'terms of reference' see PARA 15A.1 NOTE 7.

6 Inquiries Act 2005 s 24(1). In relation to an inquiry that is brought to an end under s 14(1)(b) (see PARA 15A.1 TEXT AND NOTES 38, 39), the duty to deliver a report is to be read as a power to do so: s 24(2).

7 Ibid s 24(3).

8 For the meaning of 'member' see PARA 15A.1 NOTE 6.

9 2005 Act s 24(4)-(6).

10 For the purposes of ibid s 25, 'report' includes an interim report: s 25(8).

11 Ibid s 25(1). This duty falls to the chairman if (1) the minister notifies the chairman before the setting-up date that the chairman is to have responsibility for arranging publication; or (2) at any time after that date the chairman, on being invited to do so by the minister, accepts responsibility for arranging publication: s 25(2). As to the setting-up date see PARA 15A.1 NOTE 5.

Whatever is required to be published under s 25 must be laid by the minister, either at the time of publication or as soon afterwards as is reasonably practicable, before the relevant Parliament or Assembly: s 26. For the meaning of 'the relevant Parliament or Assembly' see PARA 15A.1 NOTE 12.

12 Ibid s 25(3).

13 For the meaning of 'statutory provision' see PARA 15A.3 NOTE 10.

14 2005 Act s 25(4)(a).

15 Ibid s 25(4)(b). The matters specified are (1) the extent to which withholding material might inhibit the allaying of public concern; (2) any risk of harm or damage that could be avoided or reduced by withholding any material; (3) any conditions as to confidentiality subject to which a person acquired information that he has given to the inquiry: s 25(5). 'Harm or damage' includes in particular death or injury, damage to national security or international relations, damage to the economic interests of the United Kingdom or any part of the United Kingdom, and damage caused by disclosure of commercially sensitive information: s 25(6).

Section 25(4)(b) does not affect any obligation of the minister, or any other public authority, that may arise under the Freedom of Information Act 2000 (see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 583 et seq): 2005 Act s 25(7). For the meaning of 'public authority' see PARA 15A.3 NOTE 5.

5. The relevant part of the United Kingdom and the applicable rules

The minister¹ responsible for an inquiry² must specify whether the relevant part of the United Kingdom in relation to the inquiry is England and Wales, Scotland or Northern Ireland³. The ministers responsible for an inquiry that involves more than one administration⁴ and would otherwise be subject to more than one set of rules⁵ must specify which of those sets, or what

combination of rules from more than one of those sets, is to apply⁶. The relevant part of the United Kingdom and the applicable rules must be specified no later than the setting-up date⁷ or, as the case may be, the date of conversion⁸.

The appropriate authority⁹ may make rules¹⁰ dealing with matters of evidence and procedure in relation to inquiries¹¹, the return or keeping, after the end of an inquiry, of documents¹² given to or created by the inquiry¹³ and awards¹⁴.

1 For the meaning of 'minister' see PARAA 15A.1 NOTE 1.

2 For the meaning of 'inquiry' see PARA 15A.1 NOTE 2.

3 Inquiries Act 2005 s 31(1).

4 Ie an inquiry to which ibid s 33 (see PARA 15A.7 TEXT AND NOTES 16-19) applies.

5 'Set of rules' means the rules made by virtue of ibid s 41(3) (see NOTE 9): s 31(3).

6 Ibid s 31(2). If, in the case of an inquiry which does not involve more than one administration for which a United Kingdom minister is responsible, the minister specifies that the relevant part of the United Kingdom is England and Wales and the inquiry is expected to be held wholly or partly in Wales, he may if he thinks fit specify that some or all of the rules that are to apply are rules made by virtue of s 41(3) (see NOTE 9): s 31(4). For the meaning of 'United Kingdom minister' see PARA 15A.1 NOTE 1.

7 As to the setting-up date see PARA 15A.1 NOTE 5.

8 2005 Act s 31(5). As to the conversion of inquiries see PARA 15A.2.

9 'The appropriate authority' is the Lord Chancellor, as regards inquiries for which a United Kingdom minister is responsible, or the Welsh Ministers, as regards inquiries for which they are responsible: ibid s 41(3) (amended by the Government of Wales Act 2006 Sch 10 para 95(2)).

10 The power to make such rules is exercisable by statutory instrument, and a statutory instrument so made is subject to annulment, if made by the Lord Chancellor, in pursuance of a resolution of either House of Parliament and, if made by the Welsh Ministers, in pursuance of a resolution of the National Assembly for Wales: 2005 Act s 41(4), (5) (amended by the 2006 Act Sch 10 para 95(3), (4)).

11 2005 Act s 41(1)(a).

12 For the meaning of 'document' see PARA 15A.3 NOTE 5.

13 2005 Act s 41(1)(b). The Freedom of Information Act 2000 s 32(2) (see **CONFIDENCE AND DATA PROTECTION** vol 8(1) (2003 Reissue) PARA 594) does not apply in relation to information contained in documents that, in pursuance of rules under the 2005 Act s 41(1)(b), have been passed to and are held by a public authority: s 18(3). For the meaning of 'public authority' see PARA 15A.3 NOTE 5.

14 Ie awards under ibid s 40 (see PARA 15A.9 TEXT AND NOTES 13-15): s 41(1)(c). Such rules may in particular make provision as to how and by whom the amount of awards is to be assessed, including provision allowing the assessment to be undertaken by the inquiry panel or by such other person as the panel may nominate, and make provision for review of an assessment at the instance of a person dissatisfied with it: s 41(2). See the Inquiry Rules 2006, SI 2006/1838.

6. Inquiries relating to Wales

In relation to an inquiry¹ for which a United Kingdom minister² is responsible, the minister may not, without first consulting the Welsh Ministers, include in the terms of reference³ anything that would require the inquiry to determine any fact or make any recommendation that is wholly or primarily concerned with a Welsh matter⁴. Unless the minister gives written permission⁵ to the chairman⁶, certain of the chairman's powers⁷ are not exercisable (1) in respect of evidence, documents⁸ or other things that are wholly or primarily concerned with a Welsh matter; or (2) so as to require any evidence, document or other thing to be given, produced or provided by or on behalf of the Welsh Ministers⁹.

In relation to an inquiry for which the Welsh Ministers are responsible, the terms of reference must not require it to determine any fact or to make any recommendation that is not wholly or primarily concerned with a Welsh matter¹⁰. Certain of the chairman's powers¹¹ are exercisable only (a) in respect of evidence, documents or other things that are wholly or primarily concerned with a Welsh matter; or (b) for the purpose of inquiring into something that is wholly or primarily a Welsh matter¹².

1 For the meaning of 'inquiry' see PARA 15A.1 NOTE 2.

2 For the meaning of 'United Kingdom minister' and 'minister' see PARA 15A.1 NOTE 1.

3 For the meaning of 'terms of reference' see PARA 15A.1 NOTE 7.

4 Inquiries Act 2005 s 27(1), (2), (7) (s 27(7) amended by the Government of Wales Act 2006 Sch 10 para 91(3)). 'Welsh matter' means a matter in relation to which the Welsh Ministers have functions: 2005 Act ss 27(7), 29(5) (amended by the 2006 Act Sch 10 paras 91(3), 93(3)).

5 Before granting such permission, the minister must consult the Welsh Ministers: 2005 Act s 27(4). Permission may be granted subject to such conditions or qualifications as the minister may specify: s 27(5).

6 For the meaning of 'chairman' see PARA 15A.1 NOTE 5.

7 Ie those powers conferred by the 2005 Act s 21 (see PARA 15A.3 TEXT AND NOTES 17-20).

8 For the meaning of 'document' see PARA 15A.3 NOTE 5.

9 2005 Act s 27(3) (amended by the 2006 Act Sch 10 para 91(2)).

10 2005 Act s 29(1), (2) (s 29(1) amended by the 2006 Act Sch 10 para 93(1)).

11 Ie those powers conferred by 2005 Act s 21.

12 Ibid s 29(3). Those powers are not exercisable so as to require any evidence, document or other thing to be given, produced or provided by or on behalf of Her Majesty's government in the United Kingdom: s 29(4).

7. Inquiries for which more than one minister responsible

The power to cause an inquiry¹ to be held² or to convert an inquiry³ is exercisable by two or more ministers⁴ acting jointly⁵. In the case of a joint inquiry, powers conferred on a minister⁶ are exercisable by the ministers in question acting jointly⁷, and duties imposed on a minister⁸ are joint duties of those ministers⁹.

Each of the ministers concerned¹⁰ may agree in writing that, as from a date specified in the agreement, one or more ministers should become, or cease to be, responsible for an inquiry¹¹. Where as a result of such an agreement the terms of reference¹² of the inquiry fail to comply with an applicable limitation¹³, they must be read subject to such modifications as are necessary to make them comply with the limitation¹⁴.

In the case of a joint inquiry for which the ministers responsible are not all United Kingdom ministers¹⁵, a limitation on the terms of reference of an inquiry¹⁶, or a limitation imposed on the powers conferred on the chairman¹⁷ of an inquiry¹⁸, for which a particular minister is responsible has effect only to the extent that it applies in relation to all of the relevant ministers¹⁹.

1 For the meaning of 'inquiry' see PARA 15A.1 NOTE 2.

2 Ie under the Inquiries Act 2005 s 1: see PARA 15A.1 TEXT AND NOTES 1-4.

3 Ie under ibid s 15: see PARA 15A.2.

4 For the meaning of 'minister' see PARAA 15A.1 NOTE 1.

5 2005 Act s 32(1). 'Joint inquiry' means an inquiry for which two or more ministers are responsible by virtue of s 32 or s 34 (see TEXT AND NOTES 10-14): s 32(2).

6 le conferred by any provision of the 2005 Act except s 41 (see PARA 15A.5 TEXT AND NOTES 9-14).

7 Ibid s 32(3)(a).

8 le imposed by the 2005 Act.

9 Ibid s 32(3)(b) which, so far as relating to obligations under s 39 (see PARA 15A.9 TEXT AND NOTES 1-12), is subject to any different arrangements that may be agreed by the ministers in question: s 32(4).

10 'The ministers concerned' means the ministers responsible for the inquiry before the specified date together with any who, under an agreement, are to become responsible for it as from that date: s 34(5). Where such an agreement is made, (1) in relation to any time on or after the specified date, references in the 2005 Act to the minister responsible for the inquiry are to be read in accordance with the agreement; (2) each of the ministers concerned has obligations under s 39 (see PARA 15A.9 TEXT AND NOTES 1-12) only in relation to the period when that minister was or is responsible for the inquiry: s 34(2). Head (2) is subject to any different arrangements that may be specified in the agreement: s 34(3).

11 Ibid s 34(1).

12 For the meaning of 'terms of reference' see PARA 15A.1 NOTE 7.

13 le a limitation imposed by the 2005 Act s 27(2) or 29(2).

14 Ibid s 34(4).

15 For the meaning of 'United Kingdom minister' see PARA 15A.1 NOTE 1.

16 le a limitation imposed by the 2005 Act s 27(2) or 29(2).

17 For the meaning of 'chairman' see PARA 15A.1 NOTE 5.

18 le a limitation imposed by the 2005 Act s 27(3), 29(3) or (4).

19 Ibid s 33.

8. Offences

A person is guilty of an offence if he fails without reasonable excuse to do anything that he is required to do by a notice¹ from the chairman² of an inquiry³. Proceedings for such an offence may be instituted only by the chairman⁴.

A person is also guilty of an offence if during the course of an inquiry he (1) does anything that is intended to have the effect of (a) distorting or otherwise altering any evidence, document⁵, or other thing that is given, produced or provided to the inquiry panel⁶; or (b) preventing any evidence, document or other thing from being given, produced or provided to the inquiry panel, or anything that he knows or believes is likely to have that effect⁷; (2) intentionally suppresses or conceals a document that is, and that he knows or believes to be, a relevant document⁸; or (3) intentionally alters or destroys such a document⁹. Proceedings for any such offence may be instituted only by or with the consent of the Director of Public Prosecutions¹⁰.

A person who is guilty of an offence¹¹ is liable on summary conviction to a fine not exceeding level 3 on the standard scale¹² or to imprisonment for a term not exceeding 51 weeks¹³, or to both¹⁴.

1 le a notice under the Inquiries Act 2005 s 21 (see PARA 15A.3 TEXT AND NOTES 17-20).

2 For the meaning of 'chairman' see PARA 15A.1 NOTE 5.

3 2005 Act s 35(1). For the meaning of 'inquiry' see PARA 15A.1 NOTE 2.

4 Ibid s 35(5).

5 For the meaning of 'document' see PARA 15A.3 NOTE 5.

6 As to inquiry panels see PARA 15A.1 NOTE 6.

7 2005 Act s 35(2).

8 Ibid s 35(3)(a). A document is a relevant document if it is likely that the inquiry panel would, if aware of its existence, wish to be provided with it: s 35(3) proviso.

9 Ibid s 35(3)(b). However, a person does not commit an offence under s 35(2) or (3) by doing anything that he is authorised or required to do by the inquiry panel or by virtue of s 22 (see PARA 15A.3 NOTE 18) or any privilege that applies: s 35(4).

10 Ibid s 35(6). As to the Director of Public Prosecutions see **CRIMINAL LAW, EVIDENCE AND PROCEDURE** vol 11(3) (2006 Reissue) PARAS 1066, 1079 et seq.

11 Ie an offence under ibid s 35.

12 As to the standard scale see PARA 39 NOTE 41.

13 In relation to an offence committed before the commencement of the Criminal Justice Act 2003 s 281(5) the reference to 51 weeks is to be read as a reference to six months: 2005 Act s 44(3).

14 Ibid s 35(7), (8).

9. Expenses

The minister¹ may agree to pay to the members² of an inquiry³ panel⁴, any assessor⁵, counsel or solicitor to an inquiry, and any person engaged to provide assistance to an inquiry, such remuneration and expenses as the minister may determine⁶. The minister must meet any other expenses incurred in holding the inquiry, including the cost of publication of the report and any interim report⁷ of the inquiry, whether or not the chairman⁸ has responsibility for arranging publication⁹.

Where the minister believes that there are matters in respect of which an inquiry panel is acting outside the inquiry's terms of reference¹⁰, or is likely to do so, and gives a notice to the chairman specifying those matters and the reasons for his belief, the minister is not obliged, subject to provision made by rules¹¹, to pay any amounts or to meet any expenses in so far as they are referable (1) to any matters certified by the minister, in accordance with such provision, to be outside the inquiry's terms of reference; and (2) to any period falling after the date on which the notice was given¹².

The chairman may award reasonable amounts to a person by way of compensation for loss of time, or in respect of expenses properly incurred or to be incurred in attending, or otherwise in relation to, an inquiry¹³. The power to make such an award includes power, where the chairman considers it appropriate, to award amounts in respect of legal representation¹⁴, and is subject to such conditions or qualifications as may be determined by the minister and notified by him to the chairman¹⁵.

1 For the meaning of 'minister' see PARA 15A.1 NOTE 1.

2 For the meaning of 'member' see PARA 15A.1 NOTE 6.

3 For the meaning of 'inquiry' see PARA 15A.1 NOTE 2.

4 As to inquiry panels see PARA 15A.1 NOTE 6.

5 As to assessors see PARA 15A.1 TEXT AND NOTES 17-21.

6 Inquiries Act 2005 s 39(1). The minister must pay any amounts awarded under s 40 (see TEXT AND NOTES 13-15): s 39(2).

7 As to reports and interim reports see PARA 15A.4.

8 For the meaning of 'chairman' see PARA 15A.1 NOTE 5.

9 2005 Act s 39(3).

10 For the meaning of 'terms of reference' see PARA 15A.1 NOTE 7.

11 The rules under the 2005 Act s 41: see PARA 15A.5 TEXT AND NOTES 9-14.

12 Ibid s 39(4), (5). Within a reasonable time after the end of the inquiry the minister must publish the total amount of what he has paid or remains liable to pay: s 39(6).

13 Ibid s 40(1). A person is eligible for such an award only if he is a person attending the inquiry to give evidence or to produce any document or other thing, or a person who, in the opinion of the chairman, has such a particular interest in the proceedings or outcome of the inquiry as to justify such an award: s 40(3). For the meaning of 'document' see PARA 15A.3 NOTE 5.

14 Ibid s 40(2).

15 Ibid s 40(4).

10. Enforcement and immunity from suit

Where a person fails to comply with, or acts in breach of, a notice¹ or an order made by an inquiry², or threatens to do so, the chairman³ of the inquiry, or after the end of the inquiry, the minister⁴, may certify the matter to the High Court⁵.

No action lies against a member⁶ of an inquiry panel⁷, an assessor⁸, counsel or solicitor to an inquiry, or a person engaged to provide assistance to an inquiry in respect of any act done or omission made in the execution of his duty as such, or any act done or omission made in good faith in the purported execution of his duty as such⁹. For the purposes of the law of defamation¹⁰, the same privilege attaches to any statement made in or for the purposes of proceedings before an inquiry, including the report and any interim report¹¹ of the inquiry, and reports of proceedings before an inquiry, as would be the case if those proceedings were proceedings before a court in the relevant part of the United Kingdom¹².

1 The notice under the Inquiries Act 2005 s 19 (see PARA 15A.3 TEXT AND NOTES 5-12) or s 21 (see PARA 15A.3 TEXT AND NOTES 17-20).

2 For the meaning of 'inquiry' see PARA 15A.1 NOTE 2.

3 For the meaning of 'chairman' see PARA 15A.1 NOTE 5.

4 For the meaning of 'minister' see PARA 15A.1 NOTE 1.

5 2005 Act s 36(1). After hearing any evidence or representations on a matter so certified, the court may make such order by way of enforcement or otherwise as it could make if the matter had arisen in proceedings before the court: s 36(2). See further **CIVIL PROCEDURE** vol 12 (2009) PARA 1223 et seq.

6 For the meaning of 'member' see PARA 15A.1 NOTE 6.

7 As to inquiry panels see PARA 15A.1 NOTE 6.

8 As to assessors see PARA 15A.1 TEXT AND NOTES 17-21.

9 2005 Act s 37(1). Section 37(1) applies only to acts done or omissions made during the course of the inquiry, otherwise than during any period of suspension within the meaning of s 13 (see PARA 15A.1 TEXT AND NOTES 30-35): s 37(2).

- 10 See generally **LIBEL AND SLANDER**.
- 11 As to reports and interim reports see PARA 15A.4.
- 12 2005 Act s 37(3). As to the relevant part of the United Kingdom see PARA 15A.5.

UPDATE

13-15 Statutory Tribunals and Public Inquiries

The Tribunals, Courts and Enforcement Act 2007 Pt 1 (ss 1-49) creates a new, simplified statutory framework for tribunals. It provides a new unified structure by creating two new tribunals, the First-tier Tribunal and the Upper Tribunal: see Pt 1 Ch 2 (ss 3-29); and PARA 13A. The Lord Chancellor has power to transfer the jurisdiction of existing tribunals to the two new tribunals: see Pt 1 Ch 3 (ss 30-38); and PARA 13B. As to administrative matters in respect of certain tribunals see PARA 13C; and as to supplementary provision see PARA 13D.

The Council on Tribunals and the Scottish Committee of the Council on Tribunals are abolished and replaced by the Administrative Justice and Tribunals Council: see ss 44, 45, Sch 7; and PARA 57A.

14-15 Appointment and removal of chairman and members of various tribunals ... Public inquiries

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see PARA 196A.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/2. ADMINISTRATIVE POWERS/(1) INTRODUCTION/16. The Executive.

2. ADMINISTRATIVE POWERS

(1) INTRODUCTION

16. The Executive.

The meaning attributable to 'the Executive' (or 'the Administration') is not uniform¹. If the term is used to denote the central government, it may refer to the Queen (or the Crown), or Her Majesty's government (including, in appropriate contexts, Her Majesty in Council, and the civil service), or the cabinet, or individual ministers or government departments². The term may also be used more broadly, covering all bodies exercising functions of a public nature³. However the term is employed, there is no implication that the functions of the Executive are confined exclusively to those of an executive or administrative character⁴.

1 See para 3 ante.

- 2 See **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 351 et seq.
- 3 See paras 3, 6-8 ante.
- 4 See paras 4-5 ante.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/2. ADMINISTRATIVE POWERS/(1) INTRODUCTION/17. Parliament and the Executive.

17. Parliament and the Executive.

Traditionally, Parliament has been regarded as having a legislative competence within the United Kingdom and the dependent territories which is sovereign in the sense that it is unlimited and possibly illimitable¹. That principle in general continues to hold good, save that it is now clear that Parliament can legislate to alienate its sovereign legislative competence so as to allow supra-Parliamentary legislation, for example legislation enacted by the European Union, to prevail over domestic enactments². In the absence of any legal limitation imposed by European Union law, there are no legal limitations on the authority which Parliament may bestow on organs and members of the Executive. Parliament and the government are in fact closely interlocked. A Minister of the Crown is obliged by constitutional convention to be or become a member of one or other House of Parliament; and ministers are individually and collectively responsible to Parliament for the discharge of their powers and duties³. The bulk of parliamentary as well as subordinate legislation is, however, initiated by ministers, and a government bill does not usually fail to pass into law in substantially the form in which it was introduced.

1 See generally **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 201 et seq; **PARLIAMENT** vol 78 (2010) PARA 803. The general proposition stated in the text is not founded on judicial decisions but can be illustrated by them: see eg *Vauxhall Estates Ltd v Liverpool Corp* [1932] 1 KB 733, DC; *Ellen Street Estates Ltd v Minister of Health* [1934] 1 KB 590, CA (Parliament cannot protect its own enactments against implied repeal); *Cheney v Conn (Inspector of Taxes)* [1968] 1 All ER 779 at 782, [1968] 1 WLR 242 at 247 per Ungood-Thomas J (Parliament can legislate in disregard of international law); *Madzimbamuto v Lardner-Burke and George* [1969] 1 AC 645 at 722-723, [1968] 3 All ER 561 at 573, PC (Parliament can legislate in disregard of constitutional convention); *British Railways Board v Pickin* [1974] AC 765, [1974] 1 All ER 609, HL (the courts cannot disregard an Act, public or private, or examine proceedings in Parliament to determine whether an Act was obtained irregularly or by fraud. 'In the courts there may be argument as to the correct interpretation of an enactment: there must be none as to whether it should be on the Statute Book at all': at 789, 619 per Lord Morris of Borth-y-Gest); *Manuel v A-G* [1983] Ch 77 at 86, [1982] 3 All ER 786 at 793 per Sir Robert Megarry V-C ('once an instrument is recognised as being an Act of Parliament, no English court can refuse to obey it or question its validity') (affd [1983] Ch 77, [1982] 3 All ER 822, CA). See also *Edinburgh and Dalkeith Rly Co v Wauchope* (1842) 8 Cl & Fin 710, HL; *Lee v Bude and Torrington Junction Rly Co* (1871) LR 6 CP 576; *R v Jordan* [1967] Crim LR 483 (claim that Race Relations Act 1965 was invalid as it curtailed free speech was 'completely unarguable'); *Martin v O'Sullivan* [1984] STC 258n, CA (claim that Social Security Act 1975 was invalid on ground that members of House of Commons were disqualified was dismissed). Whether the untrammelled legislative sovereignty of the United Kingdom Parliament extends to independent Commonwealth countries is now questionable: see *Ibralebbe (alias Rasa Wotton) v R* [1964] AC 900 at 918, [1964] 1 All ER 251 at 257, PC; *Blackburn v A-G* [1971] 2 All ER 1380 at 1382, [1971] 1 WLR 1037 at 1040, CA, obiter per Lord Denning MR; cf *British Coal Corp v R* [1935] AC 500 at 520, PC. See further **COMMONWEALTH**.

2 It is now clear that the European Communities Act 1972 has the effect of narrowing Parliament's legislative sovereignty in the sense that domestic enactments which are incompatible with European Union legislation can be disapplied by the domestic courts on the grounds of their incompatibility: see the European Communities Act 1972 ss 1 (as amended), 2(1), (4), 3(1) (as amended); and **EUROPEAN COMMUNITIES**. See also Case C-213/89 *R v Secretary of State for Transport, ex p Factortame Ltd (No 2)* [1991] 1 AC 603, [1991] 1 All ER 70, ECJ and HL; Case C-221/89 *R v Secretary of State for Transport, ex p Factortame Ltd (No 3)* [1992] QB 680, [1991] 3 All ER 769, ECJ; Case C-48/93 *R v Secretary of State for Transport, ex p Factortame Ltd (No 4)* [1996] QB 404, [1996] All ER (EC) 301, ECJ; *R v Secretary of State for Transport, ex p Factortame Ltd (No 5)* [2000] 1 AC 524, [1999] 4 All ER 906, HL; *R v Secretary of State for Employment, ex p Equal Opportunities Commission*

[1995] 1 AC 1, [1994] 1 All ER 910, HL; *Case C-392/93 R v HM Treasury, ex p British Telecommunications plc* [1996] QB 615, [1996] ECR I-1631, ECJ; *Bossa v Nordstress Ltd* [1998] ICR 694, [1998] IRLR 284, EAT; *R v Comr Customs and Excise, ex p Lunn-Poly Ltd* [1999] 1 CMLR 1357, [1999] STC 350, CA; *Perceval-Price v Department of Economic Development* [2000] IRLR 380, Times, 28 April, CA (NI); *R v Secretary of State for Employment, ex p Seymour-Smith* [2000] 1 All ER 857, [2000] 1 WLR 435, HL. At present, the European Communities Act 1972 is the only domestic enactment which has this particular narrowing effect on Parliament's legislative sovereignty (cf the Human Rights Act 1998 under which the courts have no powers to disapply primary legislation which cannot be read or construed so as to be compatible with the rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) Cmd 8969): see the Human Rights Act 1998 ss 3, 6; and para 87 post). It is probably the case that the European Communities Act 1972 only has the effect of narrowing Parliament's legislative sovereignty for so long as that enactment is not expressly repealed by Parliament. Unsuccessful attempts have been made to challenge the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmd 5179) (EC Treaty) as being unlawful on the grounds that it led to the surrender of parliamentary sovereignty (see *Blackburn v A-G* [1971] 2 All ER 1380, [1971] 1 WLR 1037, CA) and that it was contrary to the Bill of Rights (1688) (see *McWhirter v A-G* [1972] CMLR 882, CA). The European Court of Justice has itself held that European Community law prevails over the constitutional provisions of member states in a number of cases (see Case 11/70 *Internationale Handelsgesellschaft mbH v Einfuhr-und Vorratsstelle für Getreide und Futtermittel* [1970] ECR 1125, [1972] CMLR 255, ECJ) and over subsequent incompatible domestic legislation (see eg Case 6/64 *Costa v ENEL* [1964] ECR 585, [1964] CMLR 425, ECJ; Case 106/77 *Amministrazione delle Finanze dello Stato v Simmenthal SpA* [1978] ECR 629, [1978] 3 CMLR 263, ECJ). Certain provisions of European legislation have direct effect in English courts, as a result of the European Communities Act 1972: see **EUROPEAN COMMUNITIES**. See eg Case 152/84 *Marshall v Southampton and South-West Hampshire Area Health Authority (Teaching)* [1986] QB 401, [1986] 2 All ER 584, ECJ; *Macarthy Ltd v Smith* [1981] QB 180 at 200, [1981] 1 All ER 111 at 121, CA, per Lord Denning MR (by reason of the European Communities Act 1972, where there is any inconsistency between Community law and English law, Community law takes priority). On the ways in which European legislation may be used as an aid to interpretation of English legislation see eg *Roberts v Cleveland Area Health Authority* [1979] 2 All ER 1163, [1979] 1 WLR 754, CA; *Garland v British Rail Engineering Ltd* [1983] 2 AC 751, [1982] 2 All ER 402, HL; *Roberts v Tate & Lyle Food and Distribution Ltd* [1983] ICR 521, EAT; *Duke v GEC Reliance Ltd* [1988] AC 618, [1988] 1 All ER 626, HL (the European Communities Act 1972 s 2(4) did not empower or oblige a British court to distort the meaning of a British statute in order to enforce against an individual a Community directive which had no direct effect as between individuals); *Pickstone v Freemans plc* [1989] AC 66, [1988] 2 All ER 803, HL; *Litster v Forth Dry Dock and Engineering Co Ltd* [1990] 1 AC 546, [1989] 1 All ER 1134, HL; Case C-106/89 *Marleasing SA v La Comercial Internacional de Alimentacion SA* [1990] ECR I-4135, [1992] 1 CMLR 305, ECJ. See further **EUROPEAN COMMUNITIES**.

3 For the powers and duties vested by prerogative or statute in the Crown but exercised or performed, by constitutional convention, on ministerial advice see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 19 et seq; **PARLIAMENT** vol 78 (2010) PARAS 805, 810 et seq.

UPDATE

17 Parliament and the Executive

TEXT AND NOTE 1--Any reference to a dependent territory within the meaning of the British Nationality Act 1981 is now to a British overseas territory: see the British Overseas Territories Act 2002 s 1(2).

NOTE 2--It is not appropriate to apply a restrictive interpretation to domestic legislation that is enacted to implement a Community directive if national law goes beyond Community obligations: *Braymist Ltd v Wise Finance Co Ltd* [2002] EWCA Civ 127, [2002] 2 All ER 333, [2002] 3 WLR 322.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/2. ADMINISTRATIVE POWERS/(1) INTRODUCTION/18. Illustrations of powers.

18. Illustrations of powers.

Of the executive powers vested in the central government and bearing directly on individual rights and interests, relatively few are derived from the royal prerogative¹. The powers of the Crown, individual ministers and departments of state are for the most part statutory², and range from the determination and implementation of matters of high policy to an extensive array of individual acts and decisions, such as placing government contracts, making grants, loans and compulsory purchase orders, and issuing permits and licences. Ministers enjoy a special range of administrative powers in relation to local authorities³, as, for example, the prescribing of maximum rates and precepts in certain circumstances, the control of capital expenditure, the sanctioning of loans, confirming schemes, compulsory purchase orders and byelaws and approving certain senior appointments, and also in relation to other public bodies, as, for example, appointing and removing members of governing boards and giving general directions on matters of national policy, and certain types of specific directions, to public corporations⁴. The statutory administrative powers of local authorities include the building and allocation of houses, regulation of street traffic, environmental planning, public health functions, educational administration and the licensing, registration and inspection of premises and occupational activities⁵. Bodies providing or regulating public services exercise numerous administrative powers which do not lend themselves readily to classification.

1 Examples of such prerogative powers are the power to grant, withhold or withdraw a passport; to requisition property and intern enemy aliens in wartime; to grant charters of incorporation to university institutions; and to pardon persons convicted of crimes. It is now clear that decisions which involve the exercise of the royal prerogative may nevertheless be subject to judicial review. See *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, [1984] 3 All ER 935, HL; *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Everett* [1989] QB 811, [1989] 1 All ER 655, [1989] 2 WLR 224, CA; *R v Secretary of State for the Home Department, ex p Bentley* [1994] QB 349, [1993] 4 All ER 442, DC. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 380; **CROWN AND ROYAL FAMILY** vol 12(1) (Reissue) para 50.

2 This term includes powers conferred by subordinate legislation.

3 See, however, the Local Government, Planning and Land Act 1980 s 1 (as amended) for relaxation of ministerial control of authorities in certain circumstances and for power to control the level of local authorities' capital expenditure; the Local Government Finance Act 1982 for ministerial power to check spending of local authorities by reduction of the rate support grants; and the Rates Act 1984 for power to prescribe maximum rates and precepts in certain circumstances. Domestic rates were abolished and replaced by community charges and then by council tax: see the Local Government Finance Act 1992. See further **LOCAL GOVERNMENT** vol 69 (2009) PARA 524 et seq; **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) PARA 227 et seq.

4 See eg *R v Secretary of State for the Home Department, ex p Brind* [1991] 1 AC 696, [1991] 1 All ER 720, HL (which concerned the lawfulness of directives issued by the Home Secretary to the British Broadcasting Corporation under the Broadcasting Act 1981 (now repealed) which had the effect of restraining the Corporation from broadcasting any matter consisting of or including words spoken by representatives of organisations proscribed under the Prevention of Terrorism (Temporary Provisions) Act 1984 or the Northern Ireland (Emergency Provisions) Act 1978). Under the Broadcasting Act 1990 s 10, the Home Secretary can give directions to the Independent Television Commission in respect of the transmission of particular items.

5 See in particular **EDUCATION** vol 15(1) (2006 Reissue) para 20 et seq; **ENVIRONMENTAL QUALITY AND PUBLIC HEALTH** vol 45 (2010) PARA 99 et seq; **HOUSING** vol 22 (2006 Reissue) para 240 et seq; **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) para 213 et seq. Under the Local Government Act 1999 Pt I (ss 1-29) (s 25 as amended) local authorities are subject to an obligation to secure continuous improvements in the way in which their functions are exercised having regard to a combination of economy, efficiency and effectiveness; which is to say they are subject to an obligation to achieve best value in the provision of services: see s 3(1); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 689 et seq.

UPDATE

18 Illustrations of powers

NOTE 3--Rates Act 1984 repealed: Statute Law (Repeals) Act 2008.

NOTE 4--Broadcasting Act 1990 s 10 repealed: Communications Act 2003 ss 360(3), 406(7), Sch 15 Pt 1 para 4, Sch 19(1).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/2. ADMINISTRATIVE POWERS/(1) INTRODUCTION/19. Statutory and prerogative powers.

19. Statutory and prerogative powers.

If the repository of a power exceeds its authority, or if a power is exercised without lawful authority, a purported exercise of power may be pronounced invalid. The lawful exercise of a statutory power¹ presupposes compliance not only with the substantive, formal and procedural conditions laid down for its performance but also with implied requirements governing the exercise of discretion². All statutory powers³ must be exercised in good faith⁴, and for the purpose for which they were granted⁵. The repository of a power must have regard to relevant considerations and not allow itself to be influenced by irrelevant considerations⁶. It must act fairly and reasonably⁷. Following the coming into force of the Human Rights Act 1998⁸, it is likely to be the case that acting fairly and reasonably will in general incorporate an obligation to act proportionately⁹. To the extent that a prerogative power is justiciable¹⁰ in the courts, its exercise may be pronounced invalid on similar grounds to those which may invalidate the exercise of a statutory power¹¹.

The burden of establishing that the exercise of a power, or a decision, is invalid generally rests with the person seeking to challenge it¹². Where, however, the exercise of the power has resulted in the detention of a person¹³ or the expropriation of property¹⁴, the burden passes to the repository of the power to establish that the exercise was valid¹⁵.

1 When a statute confers a power or imposes a duty, the power may be exercised and the duty performed from time to time as the occasion requires, unless a contrary intention appears: Interpretation Act 1978 s 12. See **STATUTES** vol 44(1) (Reissue) para 1339.

2 See further paras 82-86 post.

3 It appears that the propositions stated in the three following sentences in the text apply also to public bodies which are chartered or common law corporations, as distinct from statutory corporations, and which are, therefore, competent to exercise powers not expressly conferred on them by statute. See further **CORPORATIONS** vol 9(2) (2006 Reissue) para 1230; **LOCAL GOVERNMENT** vol 69 (2009) PARA 460 et seq.

4 *Galloway v London Corpn* (1864) 2 De GJ & Sm 213 at 229 (on appeal (1866) LR 1 HL 34 at 43); *Westminster Corpn v London and North Western Rly Co* [1905] AC 426, HL; *Roberts v Hopwood* [1925] AC 578 at 603, HL, per Lord Sumner; *British Oxygen Co Ltd v Minister of Technology* [1971] AC 610 at 624, [1970] 3 All ER 165 at 170, HL, per Lord Reid; cf *G Scammell and Nephew Ltd v Hurley* [1929] 1 KB 419, CA. A power is generally associated with the exercise of a discretion: *Bell v Crane* (1873) LR 8 QB 481. As to bad faith and fraud see further para 82 post. As to where a statute ousts the jurisdiction of the court to question the validity of an act done under statutory powers see para 79 post.

5 *Tinkler v Wandsworth District Board of Works* (1858) 2 De G & J 261 at 274; *A-G v Great Eastern Rly Co* (1880) 5 App Cas 473 at 481, HL; *Croft v Rickmansworth Highway Board* (1888) 58 LJ Ch 14, CA; *A-G v Pontypridd UDC* [1906] 2 Ch 257, CA; *Symes and Jaywick Associated Properties Ltd v Essex Rivers Catchment Board* [1936] 2 All ER 551 (revsd on another point [1937] 1 KB 548, [1936] 3 All ER 908, CA); and see *Cook v Ward* (1877) 2 CPD 255 at 261, CA; *Goldberg & Son Ltd v Liverpool Corpn* (1900) 82 LT 362 at 366, CA; *R v Governor of Brixton Prison, ex p Soblen* [1963] 2 QB 243, [1962] 3 All ER 641, CA; *R v Hillingdon London Borough Council, ex p Royco Homes Ltd* [1974] QB 720, [1974] 2 All ER 643, DC; *R v Inner London Education Authority, ex p Westminster City Council* [1986] 1 All ER 19, [1986] 1 WLR 28, CA (if a power is exercised for two purposes, one proper and one improper, the exercise will be invalid if the improper purpose is the dominant one); *R v London Borough of Lewisham, ex p Shell UK Ltd* [1988] 1 All ER 938; *R v Home Secretary, ex p Yiadom* (1998) Times, 1 May; *Porter v Magill* [2000] 2 WLR 1420, (1999) Times, 6 May. See also para 82 post. For the principle that the powers of a statutory corporation are limited by the statute which creates it see **CORPORATIONS**

vol 9(2) (2006 Reissue) para 1231. Statutory powers must not be exercised for any purpose of a collateral kind: see *R v Leigh (Lord)* [1897] 1 QB 132; *Costello v Dacorum District Council* (1980) 79 LGR 133. As to whether the resources available to a particular public authority can be a relevant consideration see further eg *R v Gloucestershire County Council, ex p Barry* (1997) EHRR 205; *R v Chief Constable of Sussex, ex p International Trader's Ferry Ltd* [1999] 2 AC 418, [1999] 1 All ER 129, HL.

6 See eg *R v St Pancras Vestry* (1890) 24 QBD 371, CA; *Eckersley v Secretary of State for the Environment* [1977] JPL 580, 34 P & CR 124, CA; *Prest v Secretary of State for Wales* [1983] JPL 112, (1982) 81 LGR 193, CA; *R v Brent London Borough Council, ex p Gunning* (1985) 84 LGR 168, (1985) Times, 30 April; *CREEDNZ Inc v Governor General* [1981] 1 NZLR 172, CA; *R v Hillingdon Health Authority, ex p Goodwin* [1984] ICR 800; *R v Manchester City Council, ex p King* [1991] COD 422, 89 LGR 696, DC; *R v Home Secretary, ex p Venables* [1998] AC 407, [1997] 3 All ER 97, HL.

7 As to the duty to act fairly see para 96 post. As to the duty not to act unreasonably see para 86 post. Public authorities which use compulsory powers to obtain information and documents from an individual owe to that individual a duty not to disclose them to third parties: *Marcel v Metropolitan Police Comr* [1992] Ch 225, [1991] 1 All ER 845; *Morris v Director of the Serious Fraud Office* [1993] Ch 372, [1993] 1 All ER 788; *Hellewell v Chief Constable of Derbyshire* [1995] 4 All ER 473, [1995] 1 WLR 804; *Preston Borough Council v McGrath* (2000) Times, 19 May, CA.

8 le on 2 October 2000: see the Human Rights Act 1998 (Commencement No 2) Order 2000, SI 2000/1851; and para 87 post.

9 The incorporation of the principle of proportionality into rules relating to the fairness and reasonableness of administrative decisions is likely to occur given not least the courts' obligation under the Human Rights Act 1998 s 2 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**) to take into account any judgment, decision, declaration or advisory opinion of the European Court of Human Rights into account when determining human rights issues (cf *R v Secretary of State for the Home Department, ex p Brind* [1991] 1 AC 696 at 764-765, [1991] 1 All ER 720 at 737, HL, per Lord Lowry). For decisions of the European Court of Human Rights on the principle of proportionality see further eg *Handyside v United Kingdom* (1976) 1 EHRR 737 at 754, ECtHR; *Fayed v United Kingdom* (1994) 18 EHRR 393 at 432, ECtHR; *R v Ministry of Agriculture, Fisheries and Food, ex p First City Trading* [1997] 1 CMLR 250 at 278, (1996) Times, 20 December per Laws J. See also *Kingsley v United Kingdom* (2001) Times, 9 January, ECtHR (nature of judicial review proceedings contrary to the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) Cmd 8969) art 6(1) (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 134) since it restricted the court to examining the quality of the decision making process rather than the merits of the decision). There is, in any event, an obligation on the part of public bodies to act proportionately in circumstances where European Union principles apply: see eg *R v Secretary of State for Health, ex p Eastside Cheese Co* (1998) 11 Admin LR 254, 47 BMLR 1.

10 *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, [1984] 3 All ER 935, HL. See also para 63 post. On the question whether a particular prerogative power is justiciable in the courts see paras 63-64 post; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 380.

11 *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, [1984] 3 All ER 935, HL. See also para 64 post; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 380.

12 See eg *Point of Ayr Collieries Ltd v Lloyd-George* [1943] 2 All ER 546, CA; *Minister of National Revenue v Wrights' Canadian Ropes* [1947] AC 109 at 122, PC; *Associated Provincial Picture Houses Ltd v Wednesbury Corp'n* [1948] 1 KB 223 at 228, [1947] 2 All ER 680 at 682, CA, per Lord Greene MR; *R v Fulham, Hammersmith and Kensington Rent Tribunal, ex p Zerek* [1951] 2 KB 1 at 11, [1951] 1 All ER 482 at 488, DC, per Devlin J; *Potato Marketing Board v Merricks* [1958] 2 QB 316 at 331, [1958] 2 All ER 538 at 546 per Devlin J; *R v Barnet and Camden Rent Tribunal, ex p Frey Investments Ltd* [1972] 2 QB 342 at 362, [1972] 1 All ER 1185 at 1192, CA, per Salmon LJ, and at 369 and 1198 per Stamp LJ; *Secretary of State for Employment v Associated Society of Locomotive Engineers and Firemen (No 2)* [1972] 2 QB 455 at 499, [1972] 2 All ER 949 at 972-973, CA, per Buckley LJ, and at 511 and 982 per Roskill LJ; *Wilover Nominees Ltd v IRC* [1974] 3 All ER 496, [1974] 1 WLR 1342, CA; *IRC v Rossminster Ltd* [1980] AC 952 at 1013, [1980] 1 All ER 80 at 94, HL, per Lord Diplock; *R v Boundary Commission for England, ex p Foot* [1983] QB 600 at 634, [1983] 1 All ER 1099 at 1116, CA, per Donaldson MR; *Pickwell v Camden London Borough Council* [1983] QB 962 at 991, [1983] 1 All ER 602 at 621, DC, per Forbes J; *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Everett* [1989] QB 811, [1989] 1 All ER 655, CA; *R v Civil Service Appeal Board, ex p Cunningham* [1991] 4 All ER 310, [1992] ICR 816, CA; *R v Home Secretary, ex p Bentley* [1994] QB 349, [1993] 4 All ER 442, DC. Until the person challenging the exercise of a power displaces it, there is a presumption that a power has been validly exercised: *IRC v Rossminster Ltd* supra at 1013 and 95 per Lord Diplock; *Point of Ayr Collieries Ltd v Lloyd-George* supra.

The burden of proof may be different in cases of collateral challenge: see eg *City of London v Cox* (1866) LR 2 HL 230, HL; and para 65 post.

13 *Khawaja v Secretary of State for the Home Department* [1984] AC 74, [1983] 1 All ER 765, HL; *Eshugbayi Eleko v Government of Nigeria* [1931] AC 662 at 670, PC; and see eg *Re Hassan* [1976] 2 All ER 123, sub nom *R v Governor of Risley Remand Centre, ex p Hassan* [1976] 1 WLR 971, DC; *Holgate-Mohammed v Duke* [1984] AC 437, [1984] 1 All ER 1054, HL.

14 *IRC v Rossminster Ltd* [1980] AC 952, [1980] 1 All ER 80, HL; *Prest v Secretary of State for Wales* (1982) 81 LGR 193 at 198, CA, per Lord Denning MR, and at 211 per Watkins LJ. See also eg *Coleen Properties v Minister of Housing and Local Government* [1971] 1 All ER 1049 at 1054-1055, [1971] 1 WLR 433 at 439-440, CA, per Sachs LJ; *Brown v Secretary of State for the Environment* (1978) 40 P & CR 285 at 291 per Forbes J; *R v Secretary of State for the Environment, ex p Melton Borough Council* (1985) 52 P & CR 318 at 326 per Forbes J.

15 See the cases cited in notes 13-14 supra. The person challenging the exercise of the power or the decision must nevertheless raise a prima facie case that it is invalid: see *Khawaja v Secretary of State for the Home Department* [1984] AC 74 at 101, [1983] 1 All ER 765 at 774-775, HL, per Lord Wilberforce, at 112 and 782 per Lord Scarman and at 128 and 794 per Lord Templeman. See also *Re Hassan* [1976] 2 All ER 123, sub nom *R v Governor of Risley Remand Centre, ex p Hassan* [1976] 1 WLR 971, DC.

UPDATE

19 Statutory and prerogative powers

NOTE 5--*Porter*, cited, reversed, sub nom *Porter v Magill; Weeks v Magill* [2001] UKHL 67, [2002] 2 AC 357.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/2.
ADMINISTRATIVE POWERS/(2) MANNER OF EXERCISE OF POWERS/20. Excess of power:
substantive limits.

(2) MANNER OF EXERCISE OF POWERS

20. Excess of power: substantive limits.

A public body with limited statutory powers must not exercise authority not conferred upon it¹. Thus, a local authority empowered to establish wash-houses must not set up a municipal laundry², nor may it engage in other ventures in public enterprise in competition with private enterprise without the necessary statutory authorisation³. Powers granted for one purpose are to be used to achieve that purpose and not an extraneous purpose⁴. Powers expressly conferred will, however, be so interpreted as to authorise by implication the performance of acts reasonably incidental to those explicitly granted⁵, and by the Local Government Act 1972 local authorities are expressly empowered to do anything which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions⁶.

1 See eg *Anisimic Ltd v Foreign Compensation Commission* [1969] 2 AC 147 at 171, [1969] 1 All ER 208 at 213, HL, per Lord Reid; *R v Boundary Commission for England, ex p Foot* [1983] QB 600 at 615-616, [1983] 1 All ER 1099 at 1102, CA, per Sir John Donaldson MR; *R v Lord President of the Privy Council, ex p Page* [1993] AC 682, sub nom *Page v Hull University Visitor* [1993] 1 All ER 97, HL. See further paras 21-23 post.

2 *A-G v Fulham Corp* [1921] 1 Ch 440.

3 See *LCC v A-G* [1902] AC 165, HL; and **LOCAL GOVERNMENT** vol 69 (2009) PARAS 460, 461.

4 See eg *Sydney Municipal Council v Campbell* [1925] AC 338, PC; *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997, [1968] 1 All ER 694, HL; *R v Secretary of State for the Home Department, ex p Brind* [1991] 1 AC 696 at 756, [1991] 1 All ER 720 at 730, HL, per Lord Ackner; *R v Somerset County Council, ex p Fewings* [1995] 1 All ER 513, (1994) 92 LGR 674; *R v Secretary of State for Foreign Affairs, ex p The World Development Movement Ltd* [1995] 1 All ER 611, [1995] 1 WLR 386, DC. See also paras 82, 183 post.

5 *A-G v Great Eastern Rly Co* (1880) 5 App Cas 473, HL; *A-G v Leeds Corpn* [1929] 2 Ch 291; *A-G v Smethwick Corpn* [1932] 1 Ch 562, CA; *Grainger v Liverpool Corpn* [1954] 1 QB 351, [1954] 2 All ER 333, DC; *A-G v Crayford UDC* [1962] Ch 575, [1962] 2 All ER 147, CA; *Charles Roberts & Co v British Railways Board* [1964] 3 All ER 651, [1965] 1 WLR 396; *Loweth v Minister of Housing and Local Government* (1970) 22 P & CR 125; *Becker v Home Office* [1972] 2 QB 407, [1972] 2 All ER 676, CA; *Felixstowe Dock and Rly Co and European Ferries Ltd v British Transport Docks Board* [1976] 2 Lloyd's Rep 656, CA; *Manchester City Council v Greater Manchester Metropolitan County Council* (1980) 78 LGR 560, HL; *Home Office v Commission for Racial Equality* [1982] QB 385, [1981] 1 All ER 1042. These cases apply principles formulated in cases relating to companies providing public services and ancillary facilities: see eg *A-G v Great Eastern Rly Co* supra at 478 per Lord Selbourne LC, and at 481 per Lord Blackburn.

6 Local Government Act 1972 s 111(1). See *Hazell v Hammersmith and Fulham London Borough Council* [1992] 2 AC 1, [1991] 1 All ER 545, HL; *Crédit Suisse v Allerdale Borough Council* [1997] QB 306, [1996] 4 All ER 129, CA. See also the Local Government Act 1972 s 137 (as amended) (local authority may incur expenditure (within prescribed limits) which in its opinion is in the interests of its area or any part of it or all or some of its inhabitants); and **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 519.

UPDATE

20 Excess of power: substantive limits

NOTE 1--As to the power of a statutory body to join legal proceedings as an interested party, see *R v Greater Belfast Coroner, ex p Northern Ireland Human Rights Commission* (2001) Times, 11 May, CA(NI) (human rights commission, as non victim, prohibited from exercising human rights guarantees contained in the European Convention on Human Rights).

NOTE 4--See also *Stewart v Perth and Kinross Council* [2004] UKHL 16, 2004 SLT 383.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/2. ADMINISTRATIVE POWERS/(2) MANNER OF EXERCISE OF POWERS/21. Power to determine ambit of own authority.

21. Power to determine ambit of own authority.

The inherent jurisdiction of the courts to determine whether statutory powers have been exceeded is not readily ousted¹. Powers are often conferred in subjective terms, the competent authority being entitled to act when 'in its opinion', or when it is 'satisfied', or when it 'appears to' that authority that a prescribed state of affairs exists. In some situations the courts have construed such statutory language as depriving them of jurisdiction to determine independently whether the conditions precedent to the exercise of the power do in fact exist, their jurisdiction being confined to the questions whether the competent authority acted in good faith, within the four corners of the Act, and had any factual basis at all for its opinion as to the existence of those conditions². Except in times of national emergency³, however, the courts will not necessarily be deflected by a subjectively worded formula from determining independently any question of law, or a judicially ascertainable matter of fact, upon which the exercise of a statutory power depends⁴. The usual modern approach is for the courts to adopt an intermediate position and inquire whether a reasonable person could have come to the decision in question without misdirecting himself on the law or the facts in a material aspect⁵. There is no unfettered discretion in public law⁶.

Alternatively, Parliament may purport to preclude the courts from determining the vires of administrative action by prescribing special statutory formulae ostensibly excluding judicial review. The courts, however, applying a common law presumption of legislative intent⁷, have

generally declined to give literal effect to such formulae⁸. A provision that an act or order is 'final' bars any right of appeal but does not exclude the supervisory jurisdiction of the courts⁹. Provisions that rules, regulations or orders are to have effect 'as if enacted' in the enabling Act probably will not give validity to an instrument which is ultra vires¹⁰. The effect of a provision that an order is binding and conclusive or not subject to review may depend on the statutory context¹¹; the courts are unlikely to interpret such terms literally unless their intervention would be clearly inappropriate¹². The same may be said of general formulae providing that an act, order or decision is not to be called into question in any court of law¹³; there is a rebuttable presumption that the courts ought not to recognise the efficacy of a purported order, act or decision tainted with vitiating defects¹⁴. Judicial practice has not been uniform, however, and it is more likely that such language will exclude jurisdiction to review the vires of an order if a limited period has been prescribed by statute for challenging its validity and substantial detriment to private or public interests will be sustained if the order is held to be invalid after that period has expired¹⁵.

1 See paras 22, 80, 100, 104, 131 post. For an example of a statutory provision which operates to oust the jurisdiction of the courts see the Wildlife and Countryside Act 1981 s 53, Sch 15 para 12(3) which states: 'except as provided by this paragraph, the validity of an order shall not be questioned in any legal proceedings whatsoever' (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) para 613). See also *R v Cornwall County Council, ex p Huntingdon* [1994] 1 All ER 694, CA.

2 *Robinson v Sunderland Corp* [1899] 1 QB 751, DC; *Re Bowman, South Shields (Thames Street) Clearance Order 1931* [1932] 2 KB 621 at 634-635 per Swift J; *R v Minister of Health, ex p Hack* [1937] 3 All ER 176, DC; *Re Falmouth Clearance Order 1930* [1937] 3 All ER 308; *Liversidge v Anderson* [1942] AC 206 at 232-233, [1941] 3 All ER 338 at 353-354, HL, obiter per Lord Atkin; *R v Ludlow, ex p Barnsley Corp* [1947] KB 634, [1947] 1 All ER 880, DC; *A-G v AW Gamage Ltd* [1949] 2 All ER 732; *Ross-Clunis v Papadopoulos* [1958] 2 All ER 23 at 33, [1958] 1 WLR 546 at 560, PC; *Goddard v Minister of Housing and Local Government* [1958] 3 All ER 482, [1958] 1 WLR 1151; *Ashbridge Investments Ltd v Minister of Housing and Local Government* [1965] 3 All ER 371 at 375, [1965] 1 WLR 1320 at 1328-1329, CA, per Harman LJ; cf at 374 and 1326 per Lord Denning MR. See also *Robinson v Minister of Town and Country Planning* [1947] KB 702, [1947] 1 All ER 851, CA; *Peter Holmes & Son v Secretary of State for Scotland* 1965 SC 1; cf *Coleen Properties Ltd v Minister of Housing and Local Government* [1971] 1 All ER 1049, [1971] 1 WLR 433, CA. Most of the relevant cases giving literal effect to subjectively worded formulae concern not so much the existence of matters of law or fact as matters of opinion or expediency: *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014 at 1047, [1976] 3 All ER 665 at 681-682, HL, per Lord Wilberforce; cf *R v London Borough of Lambeth, ex p Miah* [1994] COD 408, 27 HLR 21; *Akin Ali v Secretary of State for the Home Department* [1994] Imm AR 489, CA; *R v Secretary of State for Education, ex p C* [1996] ELR 93, (1995) Independent, 10 February; *Rootkin v Kent County Council* [1981] 2 All ER 227, [1981] 1 WLR 1186, CA; *A-G of Trinidad and Tobago v Phillip* [1995] 1 AC 396, [1995] 1 All ER 93, PC. See also paras 82-89 post.

3 In such times the courts will more readily defer to the opinion of the Executive, particularly on the question whether an emergency does exist, even if the wording of the relevant statutory power is not 'subjective': see *Bhagat Singh v King-Emperor* (1931) 58 LR Ind App 169, PC; *King-Emperor v Banoari Lal Sarma* [1945] 1 All ER 210, PC. See also *Ningkan v Government of Malaysia* [1970] AC 379, [1969] 2 WLR 365, PC; *Carltona Ltd v Works Comrs* [1943] 2 All ER 560, CA; and *Liversidge v Anderson* [1942] AC 206, [1941] 3 All ER 338, HL (but the dissent of Lord Atkin has been approved in *IRC v Rossminster Ltd* [1980] AC 952 at 1011, [1980] 1 All ER 80 at 93, HL, per Lord Diplock, and has been cited with approval in *Khawaja v Secretary of State for the Home Department* [1984] AC 74, [1983] 1 All ER 765, HL). Cf *Secretary of State for Employment v Associated Society of Locomotive Engineers and Firemen* [1972] 2 QB 443, [1972] 2 All ER 853, NIRC; *Secretary of State for Employment v Associated Society of Locomotive Engineers and Firemen (No 2)* [1972] 2 QB 443, [1972] 2 All ER 853, NIRC; affd [1972] 2 QB 455, [1972] 2 All ER 949, CA. The courts will also accept as conclusive certain types of statement as to the existence of facts relating to matters of state (eg whether Her Majesty is at war with a foreign state; whether an entity is recognised as a sovereign state or as the government of such a state by Her Majesty's government; whether a person is recognised as being entitled to diplomatic or other jurisdictional immunity) if a certificate to that effect is tendered by a responsible minister on behalf of the Crown, in as much as it is more appropriate for the Executive than for the judiciary to pronounce upon such a question. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 811.

The courts will not encroach on parliamentary privilege by determining a question lying within the exclusive competence of either House of Parliament: see *Bradlaugh v Gossett* (1884) 12 QBD 271, DC; *Sheriff of Middlesex's Case* (1840) 11 Ad & El 273; and **PARLIAMENT** vol 78 (2010) PARAS 1078-1079.

Although the courts will review certain exercises of the Crown's prerogative, the courts will generally be reluctant to interfere where decisions are taken or powers exercised for the purpose of protecting national

security: *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Everett* [1989] QB 811, [1989] 1 All ER 655, CA; *R v Secretary of State for the Home Department, ex p Cheblak* [1991] 2 All ER 319 at 330, 334, [1991] 1 WLR 890 at 902, 906-907, CA, per Lord Donaldson MR. Cf *R v Secretary of State for the Home Department, ex p Ruddock* [1987] 2 All ER 518, [1987] 1 WLR 1482 (minister required to produce cogent evidence of potential damage to national security); *R v Ministry of Defence, ex p Smith* [1996] QB 517 at 556, [1996] 1 All ER 257 at 264, CA, per Lord Bingham MR.

4 See eg *Thorneloe and Clarkson Ltd v Board of Trade* [1950] 2 All ER 245 (where a power of independent determination was assumed); *R v Minister of Housing and Local Government, ex p Chichester RDC* [1960] 2 All ER 407, [1960] 1 WLR 587, DC; *Land Comr v Pillai* [1960] AC 854 at 880, PC; *Webb v Minister of Housing and Local Government* [1965] 2 All ER 193, [1965] 1 WLR 755, CA; *Maradana Mosque Board of Trustees v Mahmud* [1967] 1 AC 13, [1966] 1 All ER 545, PC; *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531, [1993] 3 All ER 92, HL; *R v Secretary of State for the Home Department, ex p Fayed* [1997] 1 All ER 228, [1998] 1 WLR 763, CA. As to the reluctance of the superior courts to accept that inferior courts and tribunals have power conclusively to determine their own jurisdiction see paras 76-77 post. As to superior and inferior courts see **COURTS**.

5 *Breen v Amalgamated Engineering Union* [1971] 2 QB 175, [1971] 1 All ER 1148, CA; *Secretary of State for Employment v Associated Society of Locomotive Engineers and Firemen (No 2)* [1972] 2 QB 455, [1972] 2 All ER 949, CA ('where it appears'); *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014, [1976] 3 All ER 665, HL ('if ... satisfied'); *R v Secretary of State for the Environment, ex p Norwich City Council* [1982] QB 808, [1982] 1 All ER 737, CA ('where it appears'). See also *Estate and Trust Agencies (1927) Ltd v Singapore Improvement Trust* [1937] AC 898, [1937] 3 All ER 324, PC; *Stocker v Minister of Health* [1938] 1 KB 655 at 663, sub nom *Re London County (Stoke Newington) Housing Order 1936, Stocker's Application* [1937] 4 All ER 678 at 681 per Du Parcq J; *R v Chief Immigration Officer, Lymington Airport, ex p Amrik Singh* [1969] 1 QB 333, [1968] 3 All ER 163, DC; *McEldowney v Forde* [1971] AC 632 at 660-661, [1969] 2 All ER 1039 at 1069-1071, HL, per Lord Diplock, for the application of similar tests of validity expressed in variant language.

6 See *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997, [1968] 1 All ER 694, HL; *Breen v Amalgamated Engineering Union* [1971] 2 QB 175, [1971] 1 All ER 1148, CA; *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014, [1976] 3 All ER 665, HL; *Teh Cheng Poh v Public Prosecutor, Malaysia* [1980] AC 458, [1979] 2 WLR 623, PC; *R v Tower Hamlets London Borough Council, ex p Chetnik Developments Ltd* [1988] AC 858 at 872-873, [1988] 1 All ER 961 at 966, HL, per Lord Bridge of Harwich, the other Lords concurring; *R v Ministry of Defence, ex p Smith* [1996] QB 517, [1996] 1 All ER 257, CA.

7 See para 22 post.

8 For the still stronger disinclination of the courts to accept ouster of their jurisdiction in relation to determinations by inferior courts and tribunals see paras 68, 77 post. See also *Re Racal Communications Ltd* [1981] AC 374 at 383-384, [1980] 2 All ER 634 at 639-640, HL, per Lord Diplock; *O'Reilly v Mackman* [1983] 2 AC 237 at 278, [1982] 3 All ER 1124 at 1129-1130, HL, per Lord Diplock; *R v Lord President of the Privy Council, ex p Page* [1993] AC 682, sub nom *Page v Hull University Visitor* [1993] 1 All ER 97, HL; *R v Visitors to the Inns of Court, ex p Calder* [1994] QB 1, [1993] 2 All ER 876, CA; *R v Dacorum District Council, ex p Cannon* [1996] 2 PLR 45, [1996] EGCS 97, DC. It is also necessary to bear in mind that European Union law, interpreted in the light of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) Cmd 8969) (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS**), may require that there be a right to obtain an effective remedy in a competent court: *Case 222/84 Johnston v Chief Constable of the Royal Ulster Constabulary* [1987] QB 129, [1986] 3 All ER 135, ECJ (equal pay claim; provision allowing Secretary of State to certify conclusively that conditions necessary for derogation were met was contrary to Community law; this decision led to the amendment of the Sex Discrimination Act 1975 s 52(2) by the Sex Discrimination (Amendment) Order 1988, SI 1988/249 (see **DISCRIMINATION** vol 13 (2007 Reissue) para 403). The individual's right to an effective remedy in a competent court is a right guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 13 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 163). This right is not one which has been incorporated into English law by the Human Rights Act 1998: see s 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

9 See note 14 infra; and para 79 post. A finality clause may perhaps also be construed as precluding a body from rescinding or rectifying its own order: see *R v Agricultural Land Tribunal (South Eastern Area), ex p Hooker* [1952] 1 KB 1, [1951] 2 All ER 801, DC ('conclusive evidence' clause); and cf *R v Bloomsbury and Marylebone County Court, ex p Villerwest Ltd* [1975] 2 All ER 562, [1975] 1 WLR 1175, DC (revsd on appeal [1976] 1 All ER 897, [1976] 1 WLR 362, CA). In *R v Registrar of Companies, ex p Central Bank of India* [1986] QB 1114 at 1169, [1986] 1 All ER 105 at 117, CA, a 'conclusive evidence' clause was said to exclude the admission of evidence upon a challenge, not the challenge itself. A finality clause may be effective to bar an action in negligence founded upon the impugned decision: *Jones v Department of Employment* [1989] QB 1, [1988] 1 All ER 725, CA; cf *Davy v Spelthorne Borough Council* [1984] AC 262 at 272, [1983] 3 All ER 278 at 282, HL, per Lord Fraser. Where there is an express provision that a decision is not appealable, that should be treated as

meaning what it says: *Re Racal Communications Ltd* [1981] AC 374, [1980] 2 All ER 634, HL, disapproving the suggestion in *Pearlman v Keepers and Governors of Harrow School* [1979] QB 56, [1979] 1 All ER 365, CA, that it should be construed as referring only to appeals on questions of fact; but the supervisory jurisdiction to review is not of course excluded. It may well be that the Human Rights Act 1998 will be construed as limiting the effectiveness of finality clauses. See further *Tinnelly & Sons Ltd and McElduff v United Kingdom* (1998) 27 EHRR 249, ECtHR.

10 There is a conflict on this matter between two decisions of the House of Lords: see *Institute of Patent Agents v Lockwood* [1894] AC 347, HL (words bar judicial review); cf *Minister of Health v R, ex p Yaffe* [1931] AC 494, HL (words do not protect invalid order). The latter view is supported by dicta in Scottish cases: *Glasgow Insurance Committee v Scottish Insurance Comrs* 1915 SC 504 at 509-510; *McEwen's Trustees v Church of Scotland General Trustees* 1940 SLT 357 at 359-360. For an intermediate position see *Foster v Aloni* [1951] VLR 481, Vict FC. See also *McDaid v Clydebank District Council* 1984 SLT 162, [1984] JPL 579; *Renfrew District Council v McGourlick* 1987 SLT 538. It is likely to be the case that, unless they are required by primary legislation which cannot be read or construed so as to be compatible with the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), all restrictions on the reviewing powers of the courts will be able to be challenged as infringements of the right to a judicial determination under the Human Rights Act 1998. See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

11 The context may invite judicial self-restraint, eg where the decision which the clause seeks to protect is a discretionary one dealing with an area in which the courts are ill-equipped to review the issues involved. See also the Tribunals and Inquiries Act 1992 s 12(3). It appears that the restrictive judicial approach applies equally to an ouster clause contained in a constitution: *Thomas v A-G of Trinidad and Tobago* [1982] AC 113 at 135, [1981] 3 WLR 601 at 618, PC (a point left open in *Harrikissoon v A-G of Trinidad and Tobago* [1980] AC 265, [1979] 3 WLR 62, PC).

12 Provisions to the effect that the making of an order or decision was to be conclusive evidence of its validity were interpreted literally in *Ex p Ringer* (1909) 73 JP 436, DC, and *Reddaway v Lancashire County Council* (1925) 41 TLR 422 at 423. See also *R v Middlesex Justices, ex p Walsall Union* [1907] 2 KB 581, CA; *Postmaster-General v Wadsworth* [1939] 4 All ER 1, CA; *London Parochial Charities Trustees v A-G* [1955] 1 All ER 1, [1955] 1 WLR 42; *R v Agricultural Land Tribunal (South Eastern Area), ex p Hooker* [1952] 1 KB 1, [1951] 2 All ER 801, DC; *Woollett v Minister of Agriculture and Fisheries* [1955] 1 QB 103, [1954] 3 All ER 529, CA. In some contexts, however, similar wording has been circumvented or disregarded by the courts (see eg *Andrews v Mitchell* [1905] AC 78, HL; *Waterford Corpn v Murphy* [1920] IR 165), and recent judicial attitudes towards exclusionary formulae have been very restrictive: see in particular *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147, [1969] 1 All ER 208, HL; *R v Miall* [1992] QB 836, [1992] 2 All ER 153, CA; *R v Secretary of State for the Home Department, ex p Mehta* [1992] COD 484, [1992] Imm AR 512; *R v Lord President of the Privy Council, ex p Page* [1993] AC 682, sub nom *Page v Hull University Visitor* [1993] 1 All ER 97, HL; *R v Secretary of State for the Home Department, ex p Fayed* [1997] 1 All ER 228, [1998] 1 WLR 763, CA. Cf *Square Meals Frozen Foods Ltd v Dunstable Borough Council* [1974] 1 All ER 441 at 446, [1974] 1 WLR 59 at 64-65, CA, where Lord Denning MR took the view that the provision represented a deliberate and desirable attempt to curb an excessive number of technical objections to enforcement notices reaching the courts (but this was a case where appeal to the minister within a defined period was permitted; cf note 14 infra); *R v Lord Chancellor, ex p Witham* [1998] QB 575, [1997] 2 All ER 779, DC.

13 Under the Tribunals and Inquiries Act 1958 s 11 (repealed), such wording contained in enactments (subject to specified exceptions) prior to 1 August 1958 was not to have the effect of excluding the supervisory jurisdiction of the High Court exercisable by an order of certiorari and an order of mandamus (now respectively renamed as a quashing order and a mandatory order: see para 117 notes 1, 3 post). This provision (now replaced by the Tribunals and Inquiries Act 1992 s 12) has been construed as extending to other supervisory remedies (see *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147, [1969] 1 All ER 208, HL (declaration)), and is likely to be accepted as laying down a general rule of construction; although cf *R v Registrar of Companies, ex p Central Bank of India* [1986] QB 1114 at 1170, [1986] 1 All ER 105 at 118, CA, per Lawton LJ. See also *R v Secretary of State for Foreign and Commonwealth Affairs, ex p Trawnik* (1986) Times, 21 February, CA.

14 The leading case is *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147, [1969] 1 All ER 208, HL, where a purported determination of the eponymous Commission was declared to be a nullity because it had usurped its jurisdiction, notwithstanding that the effect of the exclusionary formula in the Foreign Compensation Act 1950 s 4(4) (repealed) had been preserved by the Tribunals and Inquiries Act 1958 s 11(3) (repealed: see now the Foreign Compensation Act 1969 s 3 (as amended) (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 806)). The same is true even if the clause provides that the decision is not to be 'quashed or called into question', so that it clearly contemplates the remedy of a quashing order and effectively excludes review for error on the face of the record: *South East Asia Fire Bricks Sdn Bhd v Non-Metallic Mineral Products Manufacturing Employees' Union* [1981] AC 363, [1980] 2 All ER 689, PC. The principle is that, if the purported act or decision is outside the powers of the enabling statute, there is in reality no act or decision at all which the clause can operate to protect: *A-G v Ryan* [1980] AC 718, [1980] 2 WLR 143, PC. Therefore it becomes of particular importance to decide which errors do and which do not go to jurisdiction; as to which see

generally paras 74-78 post. Errors which have been held to go to jurisdiction so as to render ouster clauses inapplicable include breaches of natural justice (*Hibernian Property Co Ltd v Secretary of State for the Environment* (1974) 27 P & CR 197; *A-G v Ryan* supra); the failure to serve a notice on the proper person (*Pollway Nominees v Croydon London Borough Council* [1987] AC 79 at 90, [1986] 2 All ER 849 at 852, HL, per Lord Bridge); and bad faith (*Anisminic Ltd v Foreign Compensation Commission* supra). See also *R v Secretary of State for the Home Department, ex p Fayed* [1997] 1 All ER 228, [1998] 1 WLR 763, CA. As to the vexed question of the distinction, if any, between those errors of law which do and do not go to jurisdiction, see the dicta of Lord Diplock in *Re Racal Communications Ltd* [1981] AC 374 at 382-383, [1988] 2 All ER 634 at 638-639, HL, suggesting that there is a presumption that Parliament did not intend to confer upon administrative tribunals the power to determine questions of law, whereas in the case of inferior courts of law that question turns upon the construction of the statute unencumbered by any presumption (the issue does not arise in respect of the High Court because it is not a court of limited jurisdiction); cf *Pearlman v Keepers and Governors of Harrow School* [1979] QB 56, [1979] 1 All ER 365, CA; *Peak Park Joint Planning Board v Secretary of State for the Environment* (1979) 39 P & CR 361. See also *O'Reilly v Mackman* [1983] 2 AC 237 at 278, [1982] 3 All ER 1124 at 1129-1130, HL, per Lord Diplock; *R v Lord President of the Privy Council, ex p Page* [1993] AC 682, sub nom *Page v Hull University Visitor* [1993] 1 All ER 97, HL; *Boddington v British Transport Police* [1999] 2 AC 143 at 154, [1998] 2 All ER 203 at 209, HL, per Lord Irvine LC. For an example of that presumption as to administrative tribunals being held to be rebutted see *R v Registrar of Companies, ex p Central Bank of India* [1986] QB 1114 at 1176, [1986] 1 All ER 105 at 122, CA; and see generally para 77 post. A mere clerical error will not go to jurisdiction: *Miller v Weymouth and Melcombe Regis Corp* (1974) 27 P & CR 468; *Kent County Council v Secretary of State for the Environment* (1976) 75 LGR 452, (1976) 33 P & CR 70; but cf *Goddard v Minister of Housing and Local Government* [1958] 3 All ER 482, [1958] 1 WLR 1151; *Savory v Secretary of State for Wales* (1974) 31 P & CR 344, (1974) 233 EG 766. For other examples of there being no excess of jurisdiction such as to render an ouster clause inapplicable see *Jeary v Chailey RDC* (1973) 26 P & CR 280, CA; *Thomas v A-G of Trinidad and Tobago* [1982] AC 113 at 135, [1981] 3 WLR 601 at 618, PC.

15 Such provisions are common in Acts authorising compulsory purchase and similar orders in housing and planning law: see eg the Acquisition of Land Act 1981 s 25 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 612); the Town and Country Planning Act 1990 ss 284-288 (see **TOWN AND COUNTRY PLANNING** vol 46(1) (Reissue) para 42 et seq). They have been given a literal interpretation in a number of cases (*Tutin v Northallerton RDC* [1947] WN 189, CA; *Uttoxeter UDC v Clarke* [1952] 1 All ER 1318; *Smith v East Elloe RDC* [1956] AC 736, [1956] 1 All ER 855, HL; *Webb v Minister of Housing and Local Government* [1965] 2 All ER 193, [1965] 1 WLR 755, CA), and they were also expressly exempted from the operation of the Tribunals and Inquiries Act 1958 s 11 (repealed) (see note 13 supra). In *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147, [1969] 1 All ER 208, HL, serious reservations were expressed about the majority decision in *Smith v East Elloe RDC* supra, at least in so far as the case stood as authority for the principle that after the expiry of the statutory period for challenge, an order protected by such a formula cannot be impugned even on the ground that it was procured by fraud. But in *R v Secretary of State for the Environment, ex p Ostler* [1977] QB 122, [1976] 3 All ER 90, CA, it was held that *Smith v East Elloe RDC* supra was still good law. This decision was followed in *Westminster City Council v Secretary of State for the Environment* [1984] JPL 27; see also *Jeary v Chailey RDC* (1973) 26 P & CR 280, CA; *Hamilton v Secretary of State for Scotland* 1972 SLT 233; *Martin v Bearsden and Milngavie District Council* 1987 SLT 300; *R v Secretary of State for the Environment, ex p Kent* (1988) 57 P & CR 431; *R v Cornwall County Council, ex p Huntingdon* [1992] 3 All ER 566, DC. However, the courts would be reluctant to refuse to hear a person who had lost his right to appeal before he knew that he had anything to appeal about: *R v Greenwich London Borough Council, ex p Patel* (1985) 84 LGR 241, CA. See also *Customs and Excise Comrs v Holvey* [1978] QB 310, [1978] 1 All ER 1249 (amount specified deemed to be due, subject to appeal within 30 days).

UPDATE

21 Power to determine ambit of own authority

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see **LOCAL GOVERNMENT** vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see PARA 196A.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/2. ADMINISTRATIVE POWERS/(2) MANNER OF EXERCISE OF POWERS/22. Presumptions of legislative intent.

22. Presumptions of legislative intent.

When construing the ambit of statutory powers expressed in language that lends itself to more than one interpretation, the courts may have recourse to common law presumptions of legislative intent¹. These include presumptions against ousting the jurisdiction of the ordinary courts to determine the extent of statutory powers² and the scope of civil rights and obligations³; against recognising any power to impose charges on the subject in the absence of express authorisation⁴; against the conferment of power to take away proprietary rights without payment of compensation⁵; against deprivation of the liberty of the subject in time of peace⁶; against infliction of substantial detriment on individuals without giving them prior notice and an opportunity to make representations on their own behalf⁷; and generally against so construing a grant of power as to authorise unnecessary or manifestly unreasonable interference with private rights⁸. There is now a statutory obligation laid upon courts and tribunals to read and give effect to primary and secondary legislation, so far as is possible, in a way which is compatible with the human rights which have been incorporated by the Human Rights Act 1998⁹. There is a presumption that a convicted prisoner retains all civil rights which are not taken away expressly or by necessary implication¹⁰. The applicability of this presumption may be excluded by express statutory language or by the context in which the relevant power is conferred¹¹.

1 For a fuller consideration of this question see **STATUTES** vol 44(1) (Reissue) para 1437 et seq.

2 For further consideration of the ouster of jurisdiction see paras 21 ante, 79 post.

3 See eg *Chester v Bateson* [1920] 1 KB 829, DC; *Newcastle Breweries Ltd v R* [1920] 1 KB 854; *R and W Paul Ltd v Wheat Commission* [1937] AC 139, [1936] 2 All ER 1243, HL; *Pyx Granite Co v Ministry of Housing and Local Government* [1960] AC 260, [1959] 3 All ER 1, HL; *Customs and Excise Comrs v Cure and Deeley Ltd* [1962] 1 QB 340, [1961] 3 All ER 641; *R v Board of Visitors of Hull Prison, ex p St Germain* [1979] QB 425 at 455, [1979] 1 All ER 701 at 716-717, CA, per Shaw LJ; *Raymond v Honey* [1983] 1 AC 1 at 10, [1982] 1 All ER 756 at 759, HL, per Lord Wilberforce and at 14 and 762 per Lord Bridge of Harwich.

4 See eg *A-G v Wilts United Dairies Ltd* (1921) 37 TLR 884, CA (on appeal (1922) 38 TLR 781, HL); *Liverpool Corp'n v Arthur Maiden Ltd* [1938] 4 All ER 200. See also *Daymond v South West Water Authority* [1976] AC 609 at 640, [1976] 1 All ER 39 at 50, HL, per Viscount Dilhorne (presumption that a statutory body may make charges for services only upon the recipients of services; and that Parliament will not confer a power of taxation on non-elected bodies), and at 657 and 63-64 per Lord Edmund-Davies. See further *R v Hereford and Worcester Local Education Authority, ex p Jones* [1981] 1 WLR 768, 79 LGR 490; *McCarthy & Stone (Developments) Ltd v Richmond upon Thames London Borough Council* [1992] 2 AC 48, [1991] 4 All ER 897, HL.

5 See eg *Central Control Board (Liquor Traffic) v Cannon Brewery Co Ltd* [1919] AC 744 at 760, HL, per Lord Parmoor and at 763 per Lord Wrenbury; *Colonial Sugar Refining Co v Melbourne Harbour Trust Comrs* [1927] AC 343 at 359, PC; *Hall & Co Ltd v Shoreham-by-Sea UDC* [1964] 1 All ER 1, [1964] 1 WLR 240, CA; *Ministry of Housing and Local Government v Hartnell* [1965] AC 1134, [1965] 1 All ER 490, HL; *Manitoba Fisheries v R* (1978) 88 DLR (3d) 462. The principle is, however, to be applied with caution and only where there is a reasonable doubt as to the proper construction of an Act (see *Limb & Co (Stevedores) (a firm) v British Transport Docks Board* [1971] 1 All ER 828 at 838, [1971] 1 WLR 311 at 322 per Baker J), and the general scheme or purpose of the relevant legislation may render it inapplicable (see eg *Westminster Bank Ltd v Minister of Housing and Local Government* [1971] AC 508, [1970] 1 All ER 734, HL). The presumption that Parliament would not intend to legislate for the expropriation of an individual's property without payment of compensation is likely to be reinforced pursuant to the coming into force of the Human Rights Act 1998 since that Act incorporates the right to peaceful enjoyment of one's possessions contained in the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) Cmd 8969): see further Protocol 1 art 1; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 165.

6 See eg *R v Halliday* [1917] AC 260 at 274, HL, per Lord Atkinson. However, this presumption may be inoperative in wartime: see *R v Halliday* supra; *Liversidge v Anderson* [1942] AC 206, [1941] 3 All ER 338, HL (preventive detention cases). The right of the individual not to be deprived of his liberty save in certain limited

circumstances is a fundamental right enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 5: see eg *Engel v Netherlands* (1976) 1 EHRR 647, ECtHR; *Guzzardi v Italy* (1980) 3 EHRR 333; Case 116/1996 *Johnson v United Kingdom* (1999) 27 EHRR 296. This fundamental right has now been incorporated into domestic law with the result that it is a right which is directly enforceable as against public authorities: see the Human Rights Act 1998 ss 1, 6; and para 87 post.

7 See paras 95-96, 105 post.

8 See paras 189, 193-195 post. This presumption may be displaced in periods of national emergency: see *A-G for Canada v Hallet and Carey Ltd* [1952] AC 427 at 449-451, [1952] WN 300, PC. See also *Marriage v East Norfolk Rivers Catchment Board* [1950] 1 KB 284 at 307-310, [1949] 2 All ER 1021 at 1032-1035, CA, per Jenkins LJ; *Westminster Bank Ltd v Minister of Housing and Local Government* [1971] AC 508, [1970] 1 All ER 734, HL (presumption was displaced even though no national emergency). However, where the individual's private rights in fact coincide with one or more of the fundamental human rights which have been incorporated by the Human Rights Act 1998 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 101 et seq), it is likely to be the case that this presumption would apply very strongly. In particular, this is likely to be the case since, under s 6 (see para 87 post), a court or tribunal may itself be acting unlawfully if it acts compatibly with an individual's incorporated Convention rights.

9 See *ibid* s 3; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**. It is likely that this provision will be construed as empowering judges to read (or 'read into') legislation so as to make it compatible with the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) save where that legislation is patently designed to be incompatible with it (cf the position prior to incorporation of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) by the Human Rights Act 1998 where recourse to Convention principles would only be had where the statutory provision was itself ambiguous on its face: *R v Secretary of State for the Home Department, ex p Brind* [1991] 1 AC 696, [1991] 1 All ER 720, HL). See further the *Rights Brought Home: The Human Rights Bill* (Cm 3782) (1997) para 2.7.

10 *Raymond v Honey* [1983] 1 AC 1 at 10, [1982] 1 All ER 756 at 759, HL, per Lord Wilberforce and at 14 and 762 per Lord Bridge of Harwich. See also *R v Board of Visitors of Hull Prison, ex p St Germain* [1979] QB 425 at 455, [1979] 1 All ER 701 at 716, CA, per Shaw LJ; and cf *A-G v Guardian Newspapers Ltd (No 2)* [1988] 3 All ER 545 at 652-653, [1988] 3 WLR 776 at 798, HL, per Lord Griffiths. This presumption is likely to be reinforced following the incorporation of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) by the Human Rights Act 1998. See further *Golder v United Kingdom* (1975) 1 EHRR 524, ECtHR.

11 However, such an exclusion, unless it is required by primary legislation which cannot be read or construed so as to be compatible with the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), is unlikely to be permitted by the courts in circumstances where it would result in an individual's human rights being unjustifiably curtailed. The reason for this is that the courts could themselves be acting unlawfully for the purposes of the Human Rights Act 1998 s 6 if they allowed such an exclusion since they also are a public authority for the purposes of the Act and, as such, must act compatibly with incorporated Convention rights unless they are compelled to act incompatibly with those rights by incompatible primary legislation: see further para 87 post.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/2.
ADMINISTRATIVE POWERS/(2) MANNER OF EXERCISE OF POWERS/23. Waiver and estoppel.

23. Waiver and estoppel.

It is a general principle of law that an excess of statutory power cannot be validated by acquiescence in or failure to object to the excess¹, or by the operation of an estoppel². Hence it is possible for a public authority to plead the invalidity of its own conduct³. Nevertheless, there have been cases in which an assurance or representation of fact given by a public body or one of its officers to another person and relied on by that person has been held to preclude the body in question from denying its validity, or indeed its binding force, although offered otherwise than in a manner or form prescribed by law⁴. The general principle has, however, been reaffirmed in recent cases⁵, subject to a limited number of exceptions: (1) cases where there is evidence justifying the person to whom a representation is made by an officer in believing that the officer has the necessary authority to bind the public body⁶; (2) cases where the public body waives a procedural requirement and is then estopped from relying upon a lack

of formality⁷; and (3) cases of proprietary estoppel⁸. An exercise of a body's discretion which involved it in resiling from a previous practice or representation might also be attacked on the grounds that it represented an abuse of power, particularly if there was no countervailing public interest which required such a change⁹.

1 See *St Mary, Islington, Vestry v Hornsey UDC* [1900] 1 Ch 695, CA; *Swallow and Pearson v Middlesex County Council* [1953] 1 All ER 580, [1953] 1 WLR 422; and see *Collector of Land Revenue South West District Penang v Kam Gin Paik* [1986] 1 WLR 412 at 417, PC. It is otherwise, however, if the right to object to a usurpation of power has been barred by the expiration of a statutory time limit: see para 21 note 15 ante. As to waiver of a breach of natural justice see further *R v Visitors to the Inns of Court, ex p Calder* [1994] QB 1, [1993] 2 All ER 876, CA (point reserved); *Thomas v University of Bradford (No 2)* [1992] 1 All ER 964 (acquiescence in departure from correct procedure did not relieve university of its obligation to act in accordance with correct procedure).

2 The principle is that, just as a public authority may not fetter the exercise of its discretion by the adoption of an inflexible policy (see eg *R v Secretary of State for the Environment, ex p Kirkstall Valley Campaign Ltd* [1996] 3 All ER 304, [1996] JPL 1042; and see also para 32 post), so too it may not by a representation prevent itself and its successors from exercising a statutory discretion or performing a statutory duty in the future. See *Fairtitle d Mytton v Gilbert* (1787) 2 Term Rep 169; *Canterbury Corp v Cooper* (1909) 100 LT 597, CA; *Maritime Electric Co Ltd v General Dairies Ltd* [1937] AC 610, [1937] 1 All ER 748, PC; *Minister of Agriculture and Fisheries v Matthews* [1950] 1 KB 148, [1949] 2 All ER 724; *Howell v Falmouth Boat Construction Co* [1951] AC 837 at 845, [1951] 2 All ER 278 at 280, HL, per Lord Simonds and at 849 and 284 per Lord Normand; *Rhyl UDC v Rhyl Amusements Ltd* [1959] 1 All ER 257, [1959] 1 WLR 465; *Southend-on-Sea Corp v Hodgson (Wickford) Ltd* [1962] 1 QB 416, [1961] 2 All ER 46, DC; *Princes Investments Ltd v Frimley and Camberley UDC* [1962] 1 QB 681, [1962] 2 All ER 104, DC; *Azam v Secretary of State for the Home Department* [1974] AC 18, [1973] 2 All ER 765, HL; *Brown v Amalgamated Union of Engineering Workers* [1976] ICR 147 at 168; *Western Fish Products Ltd v Penwith District Council* (1978) 38 P & CR 7, CA; and see *Laker Airways Ltd v Department of Trade* [1977] QB 643 at 707, [1977] 2 All ER 182 at 194, CA, per Lord Denning MR, at 709 and 195-196 per Roskill L, and at 728 and 211 per Lawton LJ; *Epping Forest District Council v Essex Rendering Ltd* [1983] 1 All ER 359, [1983] 1 WLR 158, HL; *R v Lambeth London Borough Council, ex p Clayhope Properties Ltd* [1988] QB 563, [1987] 3 All ER 545, CA; *Calder Gravel Ltd v Kirklees Metropolitan Borough Council* (1989) 2 Admin LR 327, (1989) 60 P & CR 322; *R v Immigration Appeal Tribunal, ex p Patel (Anilkumar Rabinrabhai)* [1988] AC 910, [1988] 2 All ER 378, HL; *Mohammed Ullah v Secretary of State for the Home Department* [1995] Imm AR 166, (1994) Independent, 5 July, CA; *R v Secretary of State for the Home Department, ex p Naheed Ejaz* [1994] QB 496 at 504, [1994] 2 All ER 436 at 441, CA, per Stuart-Smith LJ; *Crédit Suisse v Allerdale Borough Council* [1997] QB 306, [1996] 4 All ER 129, CA (contention that contract ultra vires a defence to an action to enforce it, subject only to severance arguments); although cf *R v North and East Devon Health Authority, ex p Coughlan* [2000] 3 All ER 850, [2000] 2 WLR 622, CA (representation giving rise to legitimate expectation could limit the exercise of a statutory discretion); and *R v Secretary of State for Education and Employment, ex p Begbie* [2000] 1 WLR 1115, CA. Similarly, a tribunal cannot acquire jurisdiction that it lacks merely by the consent of the parties: see para 75 post. Moreover, although the general principles of the law of agency enable public authorities, including the Crown, to be contractually bound by undertakings entered into by agents ostensibly acting on their behalf (see **AGENCY** vol 1 (2008) para 25), it would seem that they do not apply if the agent's powers are limited by statute and have been exceeded: see *A-G for Ceylon v Silva* [1953] AC 461, PC (where, however, the Crown servant in question was making an erroneous representation as to the scope of his own authority). See further **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 383.

3 See eg *Fairtitle d Mytton v Gilbert* (1787) 2 Term Rep 169; *Rhyl UDC v Rhyl Amusements Ltd* [1959] 1 All ER 257, [1959] 1 WLR 465. See also *Crédit Suisse v Allerdale Borough Council* [1997] QB 306, [1996] 4 All ER 129, CA.

4 *Robertson v Minister of Pensions* [1949] 1 KB 227 at 232, [1948] 2 All ER 767 at 770 per Denning J (assurance about entitlement to war pension given by wrong department; Crown nevertheless bound); *Wells v Minister of Housing and Local Government* [1967] 2 All ER 1041, [1967] 1 WLR 1000, CA (procedural irregularity committed by council itself held to have been cured); *Lever Finance Ltd v Westminster (City) London Borough Council* [1971] 1 QB 222 at 230, [1970] 3 All ER 496 at 500, CA, per Lord Denning MR (council bound by officer's informal assurance that planning permission for modified plans not required); *Gowa v A-G* (1984) 129 Sol Jo 131, CA (Crown bound by officer's assurance that not necessary to apply for citizenship); and see *Laker Airways Ltd v Department of Trade* [1977] QB 643 at 707, [1977] 2 All ER 182 at 194, CA, obiter per Lord Denning MR; *Norfolk County Council v Secretary of State for the Environment* [1973] 3 All ER 673, [1973] 1 WLR 1400, DC (assuming the availability of estoppel but finding no reliance on the facts); *Re Selectmove Ltd* [1995] 2 All ER 531, [1995] 1 WLR 474, CA (estoppel treated as available against the Inland Revenue in proceedings based on non-payment of taxes); *Southwark London Borough Council v Logan* (1995) 8 Admin LR 315, (1995) 29 HLR 40, CA (whether proprietary estoppel as a result of council officer's representation); *R v Northamptonshire County Council, ex p Commission for the New Towns* [1992] COD 123. Cf *R v Newham London Borough Council, ex p Campbell* [1994] 2 FLR 403, (1993) 26 HLR 183; and see the cases cited in note 5 infra.

5 The broad principle laid down by Denning J in *Robertson v Minister of Pensions* [1949] 1 KB 227 at 232, [1948] 2 All ER 767 at 770 was expressly disapproved by the House of Lords in *Howell v Falmouth Boat Construction Co* [1951] AC 837 at 845, [1951] 2 All ER 278 at 280, HL, per Lord Simonds and at 849 and 284-285 per Lord Normand. In *Western Fish Products Ltd v Penwith District Council* (1978) 38 P & CR 7, the Court of Appeal classified *Wells v Minister of Housing and Local Government* [1967] 2 All ER 1041, [1967] 1 WLR 1000, CA, and *Lever Finance Ltd v Westminster (City) London Borough Council* [1971] 1 QB 222, [1970] 3 All ER 496, CA, as particular exceptions to the general rule (see notes 6-7 infra). The decision of the Court of Appeal in *Gowa v A-G* (1984) 129 Sol Jo 131, CA, was upheld on other grounds ([1985] 1 WLR 1003, HL), with the estoppel point expressly left open. See also *Brooks & Burton Ltd v Secretary of State for the Environment* (1978) 35 P & CR 27 at 40, DC, per Lord Widgery CJ (important that local government officers should be able to give informal advice without the fear of estoppel; revsd on other grounds [1978] 1 All ER 733, [1977] 1 WLR 1294, CA; dictum approved in *Western Fish Products v Penwith District Council* supra at 32 per Megaw LJ); *Rootkin v Kent County Council* [1981] 2 All ER 227, [1981] 1 WLR 1186, CA; *R v Secretary of State for the Environment, ex p Hammersmith and Fulham London Borough Council* (1985) Times, 18 May; *R v Secretary of State for the Home Department, ex p Naheed Ejaz* [1994] QB 496, [1994] 2 All ER 436, CA; *Mohammed Ullah v Secretary of State for the Home Department* [1995] Imm AR 166 at 170, (1994) Independent, 5 July, CA, per Kennedy LJ.

6 Whether the evidence justifies such a belief depends upon all the circumstances, and the mere fact of holding office, however senior, is not enough: *Western Fish Products Ltd v Penwith District Council* (1978) 38 P & CR 7 at 30, CA, per Megaw LJ holding that in *Lever Finance Ltd v Westminster (City) London Borough Council* [1971] 1 QB 222, [1970] 3 All ER 496, CA, it was the knowledge which the applicant's advisers had of the widespread practice of authorising officers to make minor modifications to applications for planning permission which entitled them to assume that there had been proper authorisation in the instant case; and see *Co-operative Retail Services Ltd v Taff-Ely Borough Council* (1979) 39 P & CR 223 at 243, CA, per Ormrod LJ (ostensible authority is only a variety of estoppel and cannot validate a void planning permission given by a local authority officer as against other members of the public); affd sub nom *A-G (ex rel Co-operative Retail Services Ltd) v Taff-Ely Borough Council* (1981) 42 P & CR 1, HL. See also *Howell v Falmouth Boat Construction Co Ltd* [1951] AC 837, [1951] 2 All ER 278, HL; *R v Secretary of State for the Home Department, ex p Ku* [1995] QB 364, [1995] 2 All ER 891, CA.

7 *Western Fish Products Ltd v Penwith District Council* (1978) 38 P & CR 7 at 31, CA, per Megaw LJ explaining *Wells v Minister of Housing and Local Government* [1967] 2 All ER 1041, [1967] 1 WLR 1000, CA, on this basis. Cases where the relationship between estoppel and legitimate expectation have been considered include *R v Northamptonshire County Council, ex p New Towns* [1992] COD 123 (doctrine of estoppel not sufficient by itself, but supporting legitimate expectation); *R v Devon County Council, ex p Baker and Johns* [1995] 1 All ER 73 at 88, (1992) 11 BMLR 141 at 156, CA, per Simon Brown LJ ('administrator or other public body will be bound in fairness by the representation made unless only its promise or undertaking as to how its power would be exercised is inconsistent with the statutory duties imposed upon it. The doctrine in this sense is akin to estoppel'); *R v Newham London Borough Council, ex p Campbell* [1994] 2 FLR 403, (1993) 26 HLR 183; *R v Ministry of Agriculture Fisheries and Food, ex p Hamble (Offshore) Fisheries Ltd* [1995] 2 All ER 714 at 725, 731, [1995] 1 CMLR 533 at 546, 552 per Sedley J; *R v Jockey Club, ex p RAM Racecourses* [1993] 2 All ER 225 at 236, [1990] COD 346 at 346, DC, per Stuart-Smith LJ. See also *R v Independent Television Commission, ex p TSW Broadcasting Ltd* (1992) Times, 7 February, CA, per Lord Donaldson MR ('the test in public law is fairness, not an adaptation of the law of contract of estoppel'); *R v Ministry of Agriculture, Fisheries and Food, ex p Cox* (1994) 6 Admin LR 421 at 436-437 per Popplewell J (ministry's own guidance proceeding upon same erroneous assumption as the applicant, so that it was 'inequitable' to remove applicant's quota). See further para 92 post on the issue of legitimate expectations.

8 See eg *Crabb v Arun District Council* [1976] Ch 179, [1975] 3 All ER 865, CA; *Salvation Army Trustee Co v West Yorkshire Metropolitan County Council* (1980) 41 P & CR 179; and see **ESTOPPEL** vol 16(2) (Reissue) para 1058. The general principle laid down in *Western Fish Products Ltd v Penwith District Council* (1978) 38 P & CR 7, CA, relates to estoppel by representation and does not prevent the doctrine of issue estoppel from applying in public law: *Thrasivoulou v Secretary of State for the Environment* [1988] QB 809, [1988] 2 All ER 781, CA; *R v Secretary of State for the Environment, ex p Hackney London Borough Council* [1984] 1 All ER 956, [1984] 1 WLR 592, CA. See also *Porter v Secretary of State for Transport* [1996] 3 All ER 693, [1996] IPLR 111, CA; *R v Southwark Borough Council, ex p Udu* (1996) 8 Admin LR 25, (1995) Times, 30 October, CA; *Regalbourne Ltd v East Lindsey District Council* (1994) 6 Admin LR 102, [1993] COD 297, CA.

9 See especially *Re Preston* [1985] AC 835 at 851, [1985] 2 All ER 327 at 329, HL, per Lord Scarman and at 867 and 341 per Lord Templeman (the applicant having conceded at first instance that he could not rely upon estoppel as such: see *R v IRC, ex p Preston* [1983] 2 All ER 300 at 306); *HTV Ltd v Price Commission* [1976] ICR 170 at 185, CA, per Lord Denning MR, at 192 per Scarman LJ and at 195 per Goff LJ; *Laker Airways Ltd v Department of Trade* [1977] QB 643 at 707, [1977] 2 All ER 182 at 194, CA, obiter per Lord Denning MR; *R v West Glamorgan County Council, ex p Gheissary* (1985) Times, 18 December. See also *Chu Piu-Wing v A-G* [1984] HKLR 411 at 417-418 per McMullin LJ ('There is a clear public interest to be observed in holding officials of state to promises made by them in full understanding of what was entailed by the bargain'); cited in *R v*

Horseferry Road Magistrates' Court, ex p Bennett [1994] 1 AC 42 at 61, [1993] 3 All ER 138 at 150, HL, per Lord Griffiths.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/2.
ADMINISTRATIVE POWERS/(3) PROCEDURAL REQUIREMENTS/24. In general.

(3) PROCEDURAL REQUIREMENTS

24. In general.

One of the grounds upon which actions may be reviewed in administrative law is that of procedural impropriety¹. The impropriety may consist either of the failure to follow a procedure expressly provided for by a statute or by some other instrument having the force of law², or of a breach of natural justice³, or it may arise out of the failure to satisfy a legitimate expectation⁴.

1 *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374 at 411, [1984] 3 All ER 935 at 951, HL, per Lord Diplock. As to procedural impropriety see para 59 post.

2 In which case, the question may arise as to whether the requirement not complied with was mandatory or directory. See eg *London & Clydeside Estates Ltd v Aberdeen District Council* [1979] 3 All ER 876 at 882, [1980] 1 WLR 182 at 188, HL, per Lord Hailsham of St Marylebone; *O'Reilly v Mackman* [1983] 2 AC 237 at 275-276, [1982] 3 All ER 1124 at 1126-1127, HL, per Lord Diplock; *R v Governor of Canterbury Prison, ex p Craig* [1991] 2 QB 195 at 204, [1990] 2 All ER 645 at 658, DC, per Watkins LJ; *R v North West Thames Regional Health Authority, ex p Daniels (Rhys Williams)* [1994] COD 44, (1993) 19 BMLR 67, DC; *Wang v IRC* [1994] 1 WLR 1286, PC. Where the proper performance of one act is a condition precedent to the performance of other acts or the taking of a decision, and the first act is invalid, all subsequent actions depending upon or flowing from it will likewise be ultra vires and invalid: see eg *R v Brent London Borough Council, ex p Gunning* (1985) 84 LGR 168 at 176, 186 per Hodgson J; *R v Manchester City Magistrates' Court, ex p Davies* [1989] QB 631, [1989] 1 All ER 90, CA; and see *R v Secretary of State for the Environment, ex p Birmingham City Council* (1984) 83 LGR 79 (procedural irregularity by local authority before laying proposals before minister; minister could not validly approve proposals even if it could not be said that he knew or ought to have known of the irregularity). See further para 91 post.

3 See paras 95-96 post.

4 See para 92 post.

UPDATE

24 In general

NOTE 2--See *Sharma v Registrar to the Integrity Commission* [2007] UKPC 42, [2007] 1 WLR 2849.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/2.
ADMINISTRATIVE POWERS/(3) PROCEDURAL REQUIREMENTS/25. Severance of partly invalid instruments or actions.

25. Severance of partly invalid instruments or actions.

An order or other instrument or an action may be partly valid and partly invalid. Unless the invalid part is inextricably interconnected with the valid, such that to sever it would be to alter the substance of the valid part, a court is entitled to set aside or disregard the invalid part, leaving the rest intact¹. The courts' approach to severance is that it is generally appropriate to sever² what is invalid if what remains after severance is essentially unchanged in purpose, operation and effect: this is the test of substantial severability³. Severance need not be limited to cases in which it can be accomplished by judicial surgery or textual emendation by excision⁴. In a number of cases invalid conditions annexed to the grant of licences and permits have been held to be void on the assumption that the licence or permit can properly be allowed to stand unconditionally⁵. In cases involving the validity of planning conditions the courts have tended to be less ready to allow a grant of permission, shorn of an invalid condition, to stand, in as much as the competent authority might well have declined to grant unconditional planning permission in the first place⁶. In such cases it appears that an invalid condition will be severable from the grant only if it is of a trivial nature or if it is extraneous to the use to which land may properly be put⁷, or possibly if a court can reasonably suppose that the authority would not have refused permission altogether had it known that the condition was invalid⁸.

1 The proposition in the text has been approved by the Divisional Court in *Dunkley v Evans* [1981] 3 All ER 285 at 287, [1981] 1 WLR 1522 at 1524, DC, per Ormrod J and by McNeill J in *R v Secretary of State for Transport, ex p GLC* [1986] QB 556 at 573, 578, [1985] 3 All ER 300 at 310, 314. See also *Thames Water Authority v Elmbridge Borough Council* [1983] QB 570 at 578, [1983] 1 All ER 836 at 842, CA, per Dunn LJ, and at 585 and 847 per Stephenson LJ (there should not be severance unless 'the good and bad parts are clearly identifiable and the bad parts can be separated from the good and rejected without affecting the validity of the remaining part'); *R v North Hertfordshire District Council, ex p Cobbold* [1985] 3 All ER 486 at 490 per Mann J. See further *DPP v Hutchinson* [1990] 2 AC 783, [1990] 2 All ER 836, HL (legislative document with invalid portions omitted was of substantially different character from that which had been intended); applied in *Police Comr v Davis* [1994] 1 AC 283, [1993] 4 All ER 476, PC.

A quashing order may be granted to quash the invalid part of an order or an action: *R v Secretary of State for Transport, ex p GLC* supra (but see at 579-580 and 314-315 where McNeill J expressed some reservations). See also *R v Falmouth Borough Justices, ex p Palmer* (1962) 61 LGR 179; *R v Bournemouth Licensing Justices, ex p Maggs* [1963] 1 All ER 818, [1963] 1 WLR 320, DC; *R v Birmingham Justices, ex p Wyatt* [1975] 3 All ER 897, [1976] 1 WLR 260, DC; *R v Secretary of State for the Environment, ex p Lancashire County Council* [1994] 4 All ER 165, 93 LGR 29; *R v Tower Hamlets London Borough Council, ex p Tower Hamlets Combined Traders Association* [1994] COD 325; *R v Pateley Bridge Justices, ex p Percy* [1994] COD 453, DC; *R v Southwark Coroner's Court, ex p Epsom Health Care NHS Trust* [1995] COD 92; *R v Southwark London Borough Council, ex p Dagou* [1995] NPC 20, 28 HLR 72; *R v Exeter Crown Court, ex p Chennery* [1996] COD 207, DC. But cf *R v Old Street Magistrates' Court, ex p Spencer* (1994) Times, 8 November, DC. As to quashing orders see para 123 et seq post.

Where there is a requirement that there be consultation before delegated legislation is promulgated and certain relevant parties are not consulted, the delegated legislation may be invalid vis à vis those parties: see *Agricultural, Horticultural and Forestry Industry Training Board v Aylesbury Mushrooms Ltd* [1972] 1 All ER 280, [1972] 1 WLR 190; *Burke v Minister of Labour* [1979] IR 354.

2 Use of the word 'severance' in this context has been described as inappropriate because it should, in strictness, only properly be used in the context of private law and, in particular, of covenants in restraint of trade: see *R v Secretary of State for Transport, ex p GLC* [1986] QB 556 at 569, [1985] 3 All ER 300 at 307 per McNeill J; *Thames Water Authority v Elmbridge Borough Council* [1983] QB 570 at 580, [1983] 1 All ER 836 at 844, CA, per Dunn LJ. See also *United City Merchants (Investments) Ltd and Glass Fibres and Equipments Ltd v Royal Bank of Canada* [1983] 1 AC 168 at 189-190, [1982] 2 All ER 720 at 730, HL, per Lord Diplock; and see *Thames Water Authority v Elmbridge Borough Council* supra at 577 and 842 per Dunn LJ ('the cases show that the courts have adopted a wider approach to the question of severance in public law than they have in private law').

3 See *DPP v Hutchinson* [1990] 2 AC 783 at 811, [1990] 2 All ER 836 at 845, HL, per Lord Bridge of Harwich ('When textual severance is possible, the test of substantial severability will be satisfied when the valid text is unaffected by, and independent of, the invalid. The law which the court may then uphold and enforce is the very law which the legislator has enacted, not a different law. But when the court must modify the text in order to achieve severance, this can only be done when the court is satisfied that it is effecting no change in the substantial purpose and effect of the impugned provision'). See also *Potato Marketing Board v Merricks* [1958] 2 QB 316 at 333, [1958] 2 All ER 538 at 547 per Devlin J; *R v St Edmundsbury Borough Council, ex p Investors in Industry Commercial Properties Ltd* [1985] 3 All ER 234 at 250, [1985] 1 WLR 1168 at 1187 per Stocker J (a condition imposed on planning permission was severable because it did not render the whole thing void);

McEldowney v Forde [1971] AC 632, [1969] 2 All ER 1039, HL; *R v North Hertfordshire District Council, ex p Cobbold* [1985] 3 All ER 486 (a court may only sever where severance would not alter the essential character or substance of the remaining part; accordingly, there could not be severance where the part to be severed was fundamental to the purpose of the order, instrument or action); *Woolwich Equitable Building Society v IRC* [1991] 4 All ER 92 at 109, [1990] 1 WLR 1400 at 1419, HL, per Lord Goff. Where an invalid condition is attached to a licence, a relevant test of severability is whether the licensing authority would have granted the licence without the offending condition. In cases of uncertainty, the entire licence is likely to be held invalid: *R v Inner London Crown Court, ex p Sitki* [1994] COD 342, (1993) Times, 26 October, CA.

4 le the severance need not satisfy a 'blue pencil' test: *Dunkley v Evans* [1981] 3 All ER 285 at 288, [1981] 1 WLR 1522 at 1525, DC, per Ormrod J; *Thames Water Authority v Elmbridge Borough Council* [1983] QB 570 at 577, [1983] 1 All ER 836 at 841, CA, per Dunn LJ; *R v Secretary of State for Transport, ex p GLC* [1986] QB 556 at 576, [1985] 3 All ER 300 at 312 per McNeill J. See also *DPP v Hutchinson* [1989] 1 All ER 1060 at 1070, DC, per Schiemann J; *Agricultural, Horticultural and Forestry Industry Training Board v Aylesbury Mushrooms Ltd* [1972] 1 All ER 280, [1972] 1 WLR 190.

5 See eg *Theatre de Luxe (Halifax) Ltd v Gledhill* [1915] 2 KB 49, DC; *Ellis v Dubowski* [1921] 3 KB 621, DC; *Chertsey UDC v Mixnam's Properties Ltd* [1965] AC 735, [1964] 2 All ER 627, HL; *Minister of Housing and Local Government v Hartnell* [1965] AC 1134, [1965] 1 All ER 490, HL. But cf *R v North Hertfordshire District Council, ex p Cobbold* [1985] 3 All ER 486.

6 See *Hall & Co Ltd v Shoreham-by-Sea UDC* [1964] 1 All ER 1, [1964] 1 WLR 240, CA; *Pyx Granite Co Ltd v Ministry of Housing and Local Government* [1958] 1 QB 554 at 578-579, [1958] 1 All ER 625 at 637, CA, per Hodson LJ; *Kent County Council v Kingsway Investments (Kent) Ltd* [1971] AC 72 at 106-107, [1970] 1 All ER 70 at 89-90, HL, per Lord Guest. Cf *Chertsey UDC v Mixnam's Properties Ltd* [1965] AC 735, [1964] 2 All ER 627, HL; *Minister of Housing and Local Government v Hartnell* [1965] AC 1134, [1965] 1 All ER 490, HL; *R v Hillingdon London Borough Council, ex p Royco Homes Ltd* [1974] QB 720, [1974] 2 All ER 643, DC; but cf *R v St Edmundsbury Borough Council, ex p Investors in Industry Commercial Properties Ltd* [1985] 3 All ER 234 at 250, [1985] 1 WLR 1168 at 1187; and see further **TOWN AND COUNTRY PLANNING** vol 46(2) (Reissue) para 523. Quaere whether similar principles should be applied to licensing and planning cases: see *R v North Hertfordshire District Council, ex p Cobbold* [1985] 3 All ER 486 at 492 per Mann J (cf *Kent County Council v Kingsway Investments (Kent) Ltd* supra at 107 and 89-90 per Lord Guest).

7 See *Kent County Council v Kingsway Investments (Kent) Ltd* [1971] AC 72 at 90-92, [1970] 1 All ER 70 at 75-76, HL, per Lord Reid, at 102-103 and 86 per Lord Morris of Borth-y-Gest, Lord Donovan concurring (at 114 and 96). See also *Allnatt London Properties Ltd v Middlesex County Council* (1964) 62 LGR 304. But cf *R v St Edmundsbury Borough Council, ex p Investors in Industry Commercial Properties Ltd* [1985] 3 All ER 234, [1985] 1 WLR 1168.

8 See *Kent County Council v Kingsway Investments (Kent) Ltd* [1971] AC 72 at 112-114, [1970] 1 All ER 70 at 94-96, HL, per Lord Upjohn.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/2.
ADMINISTRATIVE POWERS/(3) PROCEDURAL REQUIREMENTS/26. Validity.

26. Validity.

If an act or decision, or an order or other instrument is invalid, it should, in principle, be null and void for all purposes and it has been said that there are no degrees of nullity¹. However, an act, decision, order or other instrument which is impugned in proceedings will be presumed to be valid until it is pronounced to be unlawful at which time it is recognised as never having had any legal effect². An invalid act may be impeached in the course of collateral proceedings³. The invalidity of an ultra vires⁴ act cannot generally be cured by waiver or acquiescence⁵. Recourse to appeal against an invalid act may cure the invalidity⁶.

An invalid act may be treated as valid once a time limit for impugning it has expired⁷, and a court may decline to grant judicial review of an invalid act if the applicant for judicial review does not have sufficient standing to make the application⁸, if the application is made out of time⁹, or if the court exercises its discretion not to grant judicial review¹⁰, for example because it would not be in the public interest¹¹.

As a general rule, a formula purporting wholly to take away recourse to judicial review of an act, order or decision is effective to bar challenge to voidable¹² but not void acts, orders or decisions because the latter are not deemed to be acts, orders or decisions at all¹³. In fact, however, the legal distinction between void and voidable acts is of little, if any, practical value, partly because of inconsistencies in the use of terminology¹⁴, but principally because virtually¹⁵ all acts which are subject to judicial review may properly be characterised as void rather than voidable¹⁶. Indeed, it has been said that the distinction between void and voidable acts is no more than a matter of semantics¹⁷.

1 *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147 at 170, [1969] 1 All ER 208 at 213, HL, per Lord Reid; *Boddington v British Transport Police* [1999] 2 AC 143, [1998] 2 All ER 203, HL (ultra vires byelaws had no legal effect at all and, hence, could not found a prosecution).

2 *Boddington v British Transport Police* [1999] 2 AC 143 at 155, [1998] 2 All ER 203 at 210, HL, per Lord Irvine of Lairg LC ('Subordinate legislation, or an administrative act, is sometimes said to be presumed lawful until it has been pronounced to be unlawful. This does not, however, entail that such legislation or act is valid until quashed prospectively ... In my judgment, the true effect of the presumption is that the legislation or act which is impugned is presumed to be good until pronounced to be unlawful, but is then recognised as never having had any legal effect at all'). See also *Hoffmann-La Roche & Co AG v Secretary of State for Trade and Industry* [1975] AC 295 at 365, [1974] 2 All ER 1128 at 1153-1154, HL, per Lord Diplock (referred to in *Boddington v British Transport Police* supra at 155 and 210 per Lord Irvine of Lairg LC); *Kirklees Metropolitan Borough Council v Wickes Building Supplies Ltd* [1993] AC 227 at 271-273, [1992] 3 All ER 717 at 725-727, HL, per Lord Goff of Chieveley; *Ridge v Baldwin* [1964] AC 40 at 125, [1963] 2 All ER 66 at 110, HL, per Lord Morris of Borth-y-Gest; *Lovelock v Minister of Transport* (1980) 40 P & CR 336 at 345, (1980) 78 LGR 576 at 582, CA, per Lord Denning MR. Cf *Bugg v DPP* [1993] QB 473 at 500, [1993] 2 All ER 815 at 827, DC, per Woolf LJ (duty to comply with byelaw which is procedurally invalid until it is set aside) which was overruled by the House of Lords in *Boddington v British Transport Police* supra. See also *R v Secretary of State for the Home Department, ex p Fire Brigades Union* [1995] 2 AC 513, [1995] 2 All ER 244, HL; *R v Mid-Glamorgan County Council, ex p B* [1995] ELR 168. As to the need to challenge an unreasonable decision or order see *Great House at Sonning Ltd v Berkshire County Council* [1996] RTR 407, 95 LGR 350, CA; cf *In the Matter of Darren Simpson-Cleghorn* [1996] COD 221 (revsd on other grounds *Re S-C (mental patient: habeas corpus)* [1996] QB 599, [1996] 1 All ER 532, CA) (application for mental health detention valid basis for detention until set aside).

3 See *Wandsworth London Borough Council v Winder* [1985] AC 461, [1984] 3 All ER 976, HL; *R v Reading Crown Court, ex p Hutchinson* [1988] QB 384, [1988] 1 All ER 333, DC; and generally see para 90 et seq post. If a contract is based on an unlawful exercise of power, the courts will treat that contract as void: *Crédit Suisse v Allerdale Borough Council* [1997] QB 306, [1996] 4 All ER 129, CA. Similarly, in criminal law proceedings, an individual is normally entitled as of right to raise the invalidity of an administrative act or measure which he is charged with violating as a defence and is entitled to an acquittal if he establishes that the act is invalid: *Boddington v British Transport Police* [1999] 2 AC 143, [1998] 2 All ER 203, HL. The burden in such a case is on the defendant to establish on the balance of probabilities that the subordinate legislation is invalid: *Boddington v British Transport Police* supra at 155 and 210 per Lord Irvine of Lairg LC; *R v IRC, ex p TC Coombs & Co* [1991] 2 AC 283, [1991] 3 All ER 623, HL. See **CRIMINAL LAW, EVIDENCE AND PROCEEDURE** vol 11(3) (2006 Reissue) para 1372.

4 For the meaning of 'ultra vires' see para 74 et seq post.

5 See eg *Essex County Council v Essex Incorporated Congregational Church Union* [1963] AC 808, [1963] 1 All ER 326, HL. Similarly, estoppel cannot operate to validate invalid acts by a public body: see para 23 ante. However, certain procedural defects may be susceptible to waiver: see eg *R v South Holland Drainage Committee Men* (1838) 8 Ad & El 429; *Jones v James* (1850) 19 LJB 257; *Moore v Gamgee* (1890) 25 QBD 244, DC; although cf *Thomas v University of Bradford (No 2)* [1992] 1 All ER 964 (acquiescence in departure from correct procedure did not relieve university of its obligation to act in accordance with correct procedure). See generally para 23 ante.

6 *Calvin v Carr* [1980] AC 574 at 592, [1979] 2 All ER 440 at 447, PC ('no clear and absolute rule can be laid down on the question whether defects in natural justice appearing at an original hearing, whether administrative or quasi judicial, can be 'cured' through appeal proceedings'); *Lloyd v McMahon* [1987] AC 625, [1987] 1 All ER 1118, HL; *London & Clydeside Estates Ltd v Aberdeen District Council* [1979] 3 All ER 876, [1980] 1 WLR 182, HL. Cf *Vine v National Dock Labour Board* [1957] AC 488 at 499, [1956] 3 All ER 939 at 943, HL, per Viscount Kilmuir ('I do not think that delegation was possible. The decision of the disciplinary committee was therefore a nullity which, it is conceded, cannot be cured by appeal'). See also para 111 post.

7 See eg *O'Reilly v Mackman* [1983] 2 AC 237, [1982] 3 All ER 1124, HL. See also note 9 infra.

8 See eg *Hoffmann-La Roche & Co AG v Secretary of State for Trade and Industry* [1975] AC 295 at 366, [1974] 2 All ER 1128 at 1154, HL, per Lord Diplock; *R v Panel on Take-overs and Mergers, ex p Datafin plc* [1987] QB 815, [1987] 1 All ER 564, CA; *R v Secretary of State for the Environment, ex p Southwark London Borough Council* (1987) Times, 11 April.

9 See eg *R v Aston University Senate, ex p Roffey* [1969] 2 QB 538, [1969] 2 All ER 964, DC; and para 164 post.

10 See eg *R v Secretary of State for Social Services, ex p Association of Metropolitan Authorities* [1986] 1 All ER 164, [1986] 1 WLR 1; *R v Monopolies and Mergers Commission, ex p Argyll Group plc* [1986] 2 All ER 257, [1986] 1 WLR 763, CA; *Glynn v Keele University* [1971] 2 All ER 89, [1971] 1 WLR 487; and paras 122, 152 post.

11 See eg *R v Panel on Take-overs and Mergers, ex p Datafin plc* [1987] QB 815 at 842, [1987] 1 All ER 564 at 579-580, CA, per Sir John Donaldson MR; *R v Secretary of State for Education and Science, ex p Birmingham City Council* (1984) 83 LGR 79; *R v Monopolies and Mergers Commission, ex p Argyll Group plc* [1986] 2 All ER 257, [1986] 1 WLR 763, CA.

12 See notes 14-17 infra.

13 *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147, [1969] 1 All ER 208, HL. As to the effect of ouster clauses generally see para 21 ante.

14 For an example of the confusion which may be caused by use of the words void and voidable see *Ridge v Baldwin* [1964] AC 40 at 125, [1963] 2 All ER 66 at 110, HL, per Lord Morris of Borth-y-Gest; *Durayappah v Fernando* [1967] 2 AC 337, [1967] 2 All ER 152, PC. See also *DPP v Head* [1959] AC 83, [1958] 1 All ER 679, HL; *R v Paddington Valuation Officer, ex p Peachey Property Corp Ltd* [1966] 1 QB 380, [1965] 2 All ER 836, CA; *R v Secretary of State for the Environment, ex p Ostler* [1977] QB 122, [1976] 3 All ER 90, CA; *Pearlman v Keepers and Governors of Harrow School* [1979] QB 56, [1979] 1 All ER 365, CA; and cf *Firman v Ellis* [1978] QB 886 at 908, [1978] 2 All ER 851 at 862, CA, per Lord Denning MR (a breach of natural justice renders an act void, not voidable); *Calvin v Carr* [1980] AC 574, [1979] 2 All ER 440, PC.

15 Quaere whether there remain any acts which are voidable rather than void. See *Re Racal Communications Ltd* [1981] AC 374 at 383, [1980] 2 All ER 634 at 638-639, HL, per Lord Diplock; *O'Reilly v Mackman* [1983] 2 AC 237, [1982] 3 All ER 1124, HL (*Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147, [1969] 1 All ER 208, HL, virtually abolished the distinction between errors within the jurisdiction which are voidable and errors that go to jurisdiction and are void). Cf *South East Asia Fire Bricks Sdn Bhd v Non-Metallic Mineral Products Manufacturing Employees Union* [1981] AC 363 at 370, [1980] 2 All ER 689 at 692, PC; *Lovelock v Minister of Transport* (1980) 40 P & CR 336 at 345, CA, per Lord Denning MR, and at 350 per Waller LJ. See also the cases cited in note 17 infra.

16 It is now clearly established that a breach of natural justice renders an act or decision void and not voidable. See eg *Firman v Ellis* [1978] QB 886 at 908, [1978] 2 All ER 851 at 862, CA, per Lord Denning MR; *Calvin v Carr* [1980] AC 574, [1979] 2 All ER 440, PC; *A-G v Ryan* [1980] AC 718, [1980] 2 WLR 143, PC (cited in *Secretary of State for the Home Department, ex p Fayed* [1997] 1 All ER 228, [1998] 1 WLR 763, CA); *South East Asia Fire Bricks Sdn Bhd v Non-Metallic Mineral Products Manufacturing Employees Union* [1981] AC 363 at 370, [1980] 2 All ER 689 at 692, PC; *Re Harrington* [1984] AC 743 at 753-754, sub nom *Harrington v Roots* [1984] 2 All ER 474 at 480 per Lord Roskill; *Steeple v Derbyshire County Council* [1984] 3 All ER 468 at 501, [1985] 1 WLR 256 at 297 per Webster J. Cf *R v Paddington Valuation Officer, ex p Peachey Property Corp Ltd* [1966] 1 QB 380, [1965] 2 All ER 836, CA; *Pearlman v Keepers and Governors of Harrow School* [1979] QB 56, [1979] 1 All ER 365, CA; *R v Secretary of State for the Environment, ex p Ostler* [1977] QB 122, [1976] 3 All ER 90, CA.

17 *Lovelock v Minister of Transport* (1980) 40 P & CR 336 at 345, CA, per Lord Denning MR ('I have got tired of all the discussion about 'void' and 'voidable'. It seems to me to be a matter of words--of semantics--and that is all'). See also *Hoffman-La Roche & Co AG v Secretary of State for Trade and Industry* [1975] AC 295 at 366, [1974] 2 All ER 1128 at 1154, HL, per Lord Diplock (it is confusing to use words like 'void' or 'voidable' or 'nullity' to describe the status of an act or decision before it has been determined); *Calvin v Carr* [1980] AC 574 at 589, [1979] 2 All ER 440 at 445, PC (some confusion exists in the authorities regarding 'void' and 'voidable'); *London and Clydeside Estates Ltd v Aberdeen District Council* [1979] 3 All ER 876 at 883, [1980] 1 WLR 182 at 189-190, HL, per Lord Hailsham of St Marylebone LC, and at 894 and 203 per Lord Keith of Kinkel (use of the words 'void' and 'voidable' is 'inappropriate and apt to confuse'); *Quietlynn Ltd v Plymouth City Council* [1988] QB 114 at 131, [1987] 2 All ER 1040 at 1046, DC. See also *Chief Constable of the North Wales Police v Evans* [1982] 3 All ER 141 at 145, [1982] 1 WLR 1155 at 1163, HL, per Lord Hailsham of St Marylebone LC; *R v Secretary of State for the Home Department, ex p Mahli* [1991] 1 QB 194 at 208, [1990] 2 All ER 357 at 363, CA, per Lord Mustill ('It may well be that with the current rapid development of the law of judicial review the distinction between 'void' and 'voidable' is now in some fields becoming obsolescent'); *R v Hendon Justices, ex p DPP* [1994] QB 167 at 174, [1993] 1 All ER 411 at 415, DC, per Mann LJ. See also *Bugg v DPP* [1993] QB 473 at 491-492, [1993] 2 All ER 815 at 820 per Woolf LJ (which describes the 'movement away from seeking to

categorise unlawful administrative action into different compartments, each with their separate label, such as void or voidable or ultra vires or nullity, and instead to emphasise the grounds upon which a court can intervene and to require that intervention before an administrative action will be categorised as invalid').

UPDATE

26 Validity

NOTE 1--See *McLaughlin v Governor of the Cayman Islands* [2007] UKPC 50, [2007] 1 WLR 2839.

NOTE 6--See *Modahl v British Athletic Federation Ltd* [2001] EWCA Civ 1447, [2002] 1 WLR 1192.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/2. ADMINISTRATIVE POWERS/ (4) NON-EXERCISE OF POWERS OR DUTIES/27. Duty and discretion.

(4) NON-EXERCISE OF POWERS OR DUTIES

27. Duty and discretion.

The repository of a statutory power may be endowed with a discretion whether to act, and, if so, how to act. A discretionary power is typically conferred by words and phrases such as 'may', 'it shall be lawful'¹, 'if it thinks fit' or 'as it thinks fit'². A statutory discretion is not, however, necessarily or, indeed, usually absolute: it may be qualified by express and implied legal duties to comply with substantive and procedural requirements before a decision is taken whether or how to act³. Moreover, there may be a discretion whether to exercise a power, but no discretion as to the mode of its exercise⁴; or a duty to act when certain conditions are present, but a discretion how to act⁵. Discretion may thus be coupled with duties. On the other hand, duty unaccompanied by any discretion requires action in a prescribed manner and form to be taken when the conditions precedent exist; performance of such a duty is a mere ministerial act⁶. The exercise of judicial powers overlays these distinctions, for, although there may be an enforceable ministerial duty to exercise a jurisdiction⁷, a judicial body has a limited area of freedom to err in purporting to find facts and apply the law⁸. In certain fields of public conduct, where the duties and powers of a public body in respect of an area of activity are intermingled and questions as to the civil liability of that body arise, it may be more appropriate to analyse that body's functions in terms of control rather than of power or duty⁹.

1 *Julius v Lord Bishop of Oxford* (1880) 5 App Cas 214, HL. Words ostensibly conferring a power to act may, however, exceptionally be construed as imposing a duty to act and to act in a particular manner, when prescribed conditions are present: see eg *R v Derby Justices, ex p Kooner* [1971] 1 QB 147, [1970] 3 All ER 399, DC; and **STATUTES** vol 44(1) (Reissue) para 1337.

2 See paras 82, 86, 95, 111 post.

3 See eg *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997 at 1016, [1968] 1 All ER 694, HL (implied duty of minister to promote purposes of Act in exercising his discretion to refer a complaint under milk marketing scheme to a committee of investigation); *British Oxygen Co Ltd v Minister of Technology* [1971] AC 610 at 624, [1970] 3 All ER 165 at 170, HL, per Lord Reid ('There are two general grounds on which the exercise of an unqualified discretion can be attacked. It must not be exercised in bad faith and it must not be so unreasonably exercised as to show that there cannot have been any real or genuine exercise of the discretion'); *Bromley London Borough Council v GLC* [1983] 1 AC 768, [1982] 1 All ER 129, CA; *R v Tower Hamlets London Borough Council, ex p Chetnik Developments Ltd* [1988] AC 858 at 872, [1988] 1 All ER 961 at 966, HL, per Lord

Bridge; *R v Somerset County Council, ex p Fewings* [1995] 1 All ER 513 at 524, (1994) 92 LGR 674 at 687 per Laws J; *R v Secretary for the Home Department, ex p Fire Brigades Union* [1995] 2 AC 513 at 519-520, [1995] 1 All ER 888 at 893, CA, per Sir Thomas Bingham MR; *R v Director of Passenger Rail Franchising, ex p Save Our Railways* (1995) Times, 12 December (statutory power circumscribed by objectives, instructions and guidance). Cf *Gouriet v Union of Post Office Workers* [1978] AC 435 at 512, [1977] 3 All ER 70 at 109, HL, per Lord Edmund-Davies (Attorney-General's power to hold a criminal prosecution is an unfettered discretion ... absolute and non-reviewable). As to the duty to observe the rules of natural justice in exercising public functions see para 95 post. Pursuant to the coming into force of the Human Rights Act 1998 on 2 October 2000, it is likely to be the case that a public body which exercises its discretion incompatibly with an individual's rights under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) Cmd 8969) in circumstances where it might have exercised its discretion so as to be compatible with those rights will be acting unlawfully for the purposes of the Human Rights Act 1998 s 6 (see para 87 post; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**).

4 As where a power is conferred to grant or withhold a permit in a prescribed manner and form.

5 As where a duty is imposed to determine an application for a licence, when the application is properly made, but the licensing body has a discretion as to granting or refusing the licence or attaching conditions to the grant.

6 See para 4 ante. An example is the issue of a rate rebate: see the General Rate Act 1967 ss 48, 49, Sch 9 (repealed as from 1 April 1990: see the Local Government Finance Act 1988 ss 117, 149, Sch 13 Pt I; and **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 530; **RATING AND COUNCIL TAX** vol 39(1B) (Reissue) para 2). In certain instances, and particularly in the field of social services, a local authority may be subject to a statutory duty which, rather than being mandatory (ie a mere ministerial act), is discretionary in the sense that, whilst it establishes certain standards which the authority must attain in its area, it does not oblige the authority to act in a particular way in respect of any particular individual. See further the following cases on 'target' duties: *R v Inner London Education Authority, ex p Ali* [1990] COD 317, 2 Admin LR 822, DC; *R v Islington London Borough Council, ex p Rixon* [1997] ELR 66, (1996) 32 BMLR 136; *R v Barnet London Borough Council, ex p B* [1994] ELR 357, [1994] 1 FLR 592; *R v Bexley London Borough Council, ex p B* (31 July 1995), Lexis Enggen Library, Cases File.

7 As to refusal of jurisdiction see para 80 post.

8 See paras 76-78 post.

9 See *Home Office v Dorset Yacht Co* [1970] AC 1004, [1970] 2 All ER 294, HL; *Murphy v Brentwood District Council* [1991] 1 AC 398, [1990] 2 All ER 908, HL. See further para 189 post.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/2. ADMINISTRATIVE POWERS/ (4) NON-EXERCISE OF POWERS OR DUTIES/28. Civil liability.

28. Civil liability.

In certain circumstances civil liability may be incurred for causing damage by failure to carry out a statutory duty¹. As a general rule, it appears that liability is unlikely to arise in respect of damage attributable to failure to exercise a statutory power not coupled with a duty, or to failure to exercise such a power with proper expedition². Breach of European Union legislation may make the government liable to pay compensation or damages³. It is for the defaulting state to make reparation for breach of European Union legislation under its own substantive and procedural law. However, that law must not be less favourable than the law which is applied to similar domestic claims and must not be so framed as to make it impossible or excessively difficult to obtain reparation⁴. Pursuant to the Human Rights Act 1998, the non-exercise by a public authority of its powers or duties may give rise to civil liability in circumstances where the non-exercise of the duty or function is incompatible with an individual's Convention rights and has caused that individual loss and damage⁵.

¹ See para 186 post.

2 See eg *Stovin v Wise* [1996] AC 923, [1996] 3 All ER 801, HL. However, a public body's immunity from liability for failure to exercise its power, though great, is not absolute; the public body may be under a duty to give proper consideration to the question whether it should exercise the power or not: *Anns v Merton London Borough Council* [1978] AC 728, [1977] 2 All ER 492, HL (overruled on other grounds by *Murphy v Brentwood District Council* [1991] 1 AC 398, [1990] 2 All ER 908, HL). See further paras 193-184 post.

3 Case C-6/90 *Francovich v Italy* [1993] 2 CMLR 66, [1995] ICR 722, ECJ.

4 See further Case C-6/90 *Francovich v Italy* [1993] 2 CMLR 66, [1995] ICR 722, ECJ; Case C-66/95 *R v Secretary of State for Social Security, ex p Sutton* [1997] ECR I-2163, [1997] All ER (EC) 497, ECJ; Case C-208/90 *Emmott v Minister for Social Welfare* [1993] ICR 8, [1991] IRLR 387, ECJ; *R v Secretary of State for the Home Department, ex p Gallagher* [1996] 2 CMLR 951, Independent, 4 July, CA; *R v Secretary of State for Transport, ex p Factortame Ltd (No 5)* [2000] 1 AC 524, [1999] 4 All ER 906, HL. As to the liability which may arise from breach of directly effective directives see also Case C-41/74 *Van Duyn v Home Office* [1975] Ch 358, [1975] 3 All ER 190, ECJ; Case 152/84 *Marshall v Southampton and South West Hampshire Area Health Authority* [1986] QB 401, [1986] 2 All ER 584, ECJ; *Marshall v Southampton and South West Hampshire Area Health Authority (No 2)* [1994] AC 530n, [1994] 1 All ER 736n, HL.

5 See the Human Rights Act 1998 ss 6-8; and para 87 post.

UPDATE

28 Civil liability

NOTE 3--The principle that member states are obliged to make good damage caused to individuals by infringements of Community law for which they are responsible, as set out in *Francovich*, cited, is also applicable where the alleged infringement stems from a decision of a court adjudicating at last instance: Case C-224/01 *Köbler v Austria* [2004] QB 848, [2004] All ER (EC) 23, ECJ. It is conceivable that the court is capable of infringing Community law in the exercise of its judicial functions: Case C-173/03 *Traghetti del Mediterraneo SpA (in liquidation) v Italy* [2006] All ER (EC) 983, ECJ. See also *Cooper v HM A-G* [2008] EWHC 2178 (Admin), [2008] 3 CMLR 1370, [2008] All ER (D) 117 (Sep).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/2. ADMINISTRATIVE POWERS/ (4) NON-EXERCISE OF POWERS OR DUTIES/29. Wrongful failure to exercise discretion.

29. Wrongful failure to exercise discretion.

The usual remedy for failure to exercise a statutory discretion when the conditions have arisen for it to be exercised is a mandatory order to compel performance of the duty to act¹. A wrongful failure to exercise a discretion may occur because the deciding body has misconstrued the scope of its own powers, believing that it lacks the discretion vested in it², or because it has improperly parted with its own powers by accepting dictation from another body, or has sub-delegated its powers without authority, or has fettered its own discretion by a self-imposed rule of policy or practice³, or has purported to bind itself by giving undertakings incompatible with the discharge of its discretionary powers⁴.

1 See para 133 et seq post.

2 *R v St Pancras Vestry* (1890) 24 QBD 371, CA (wrongful refusal of pension to officer, the authority believing that it had no discretion as to the amount it could award); *R v Southampton City Justices, ex p Briggs*

[1972] 1 All ER 573, [1972] 1 WLR 277, DC (magistrates mistakenly refusing to allow accused to withdraw his consent to summary trial, because they believed they had no discretion in the matter).

3 See eg *Bromley London Borough Council v GLC* [1983] 1 AC 768, [1982] 1 All ER 129, HL; *R v Rochdale Metropolitan Borough Council, ex p Cromer Ring Mill Ltd* [1982] 3 All ER 761; *R v Secretary of State for Trade and Industry, ex p Lonrho plc* [1989] 2 All ER 609 at 619, [1989] 1 WLR 525 at 538, HL, per Lord Keith of Kinkel; *R v Surrey County Council, ex p G and H* [1995] COD 50, (1994) Times, 24 May (parents not entitled to dictate form of educational assessment); *R v Teignmouth District Council, ex p Teignbridge Quay Co Ltd* [1995] 2 PLR 1 at 8, [1995] JPL 828 at 834 per Judge J (council must not abdicate to third parties the function of deciding whether there was breach of planning control); *R v Secretary of State for the Home Department, ex p Venables* [1997] 1 All ER 327 at 348, [1997] 2 WLR 67 at 90, CA, per Lord Woolf MR ('the policy must not be so inflexible that it cannot accommodate the range of different situations to which it will have to apply'); *R v Newham London Borough Council, ex p Dada* [1996] QB 507, [1995] 2 All ER 522, CA (inflexible housing appeals policy unlawful); *R v Hampshire County Council, ex p W* [1994] ELR 460, Times, 9 June (policy must not determine the outcome); *R v Ministry of Agriculture, Fisheries and Food, ex p Hamble (Offshore) Fisheries Ltd* [1995] 2 All ER 714 at 722, [1995] 1 CMLR 533 at 542 per Sedley J; *R v Lambeth London Borough Council, ex p Njomo* (1996) 28 HLR 737 at 744-745, (1996) Times, 11 April per Sedley J. As to indefinite delay as a wrongful abdication of power see eg *Engineers' and Managers' Association v Advisory Conciliation & Arbitration Service (No 2)* [1980] 1 All ER 896, [1980] 1 WLR 302, HL; *R v Beaconsfield Magistrates Court, ex p South Buckinghamshire District Council* [1993] COD 357, 157 JP 1973, DC.

4 These legal principles are also generally applicable to the performance of statutory duties; and some of the authorities cited in para 33 post relate to such duties. As to the principles of law relating to the abuse, as distinct from the non-exercise, of statutory powers see paras 82-86 post. An abuse of discretion may, however, be, in another aspect, a failure to exercise the discretion conferred: see eg *Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997, [1968] 1 All ER 694, HL (see para 27 note 3 ante); *R v St Pancras Vestry* (1890) 24 QBD 371 at 375-376, CA, per Lord Esher MR; *R v Board of Education* [1910] 2 KB 165 at 175, CA; *R v Port of London Authority, ex p Kynoch* [1919] 1 KB 176 at 183, CA, per Bankes LJ.

As to unlawful delegation of statutory discretion see para 31 post.

UPDATE

29 Wrongful failure to exercise discretion

NOTE 3--Examining the circumstances of a case does not give rise to a wrongful failure to exercise discretion: *R v DPP, ex p C* (2000) 165 JP 102, DC (Crown Prosecution Service rejecting defence's recommendation that offender be cautioned).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/2. ADMINISTRATIVE POWERS/ (4) NON-EXERCISE OF POWERS OR DUTIES/30. Acting under dictation.

30. Acting under dictation.

A body entrusted with a statutory discretion must address itself independently to the matter for consideration. It cannot lawfully accept instructions from, or mechanically adopt the view of, another body as to the manner of exercising its discretion in a particular case¹, unless that other body has been expressly empowered to issue such directions² or unless the deciding body or officer is a subordinate element in an administrative hierarchy within which instructions from above may properly be given on the question at issue³.

1 *R v Stepney Corp* [1902] 1 KB 317, DC (wrongful deduction from compensation for loss of office in supposed obedience to Treasury policy); *Roncarelli v Duplessis* [1959] SCR 121, Can SC (revocation of licence on improper instructions from Premier); *H Lavender & Son Ltd v Minister of Housing and Local Government* [1970] 3 All ER 871, [1970] 1 WLR 1231 (dismissal of planning appeal on ground that to allow it would contravene another department's policy); *R v Police Complaints Board, ex p Madden* [1983] 2 All ER 353, [1983] 1 WLR 447

(refusal to prefer disciplinary charges against police on ground that Director of Public Prosecutions had decided not to prefer criminal charges). See also *Buttle v Buttle* [1953] 2 All ER 646, [1953] 1 WLR 1217, DC (discretion of magistrates in matrimonial case); *McLoughlin v Minister for Social Welfare* [1958] IR 1 (failure by adjudicating official to use own judgment); *R v Anderson, ex p Ipec-Air Pty Ltd* (1965) 113 CLR 177 at 189-193, [1965] ALR 1067 at 1071-1074, Aust HC, per Kitto J, and at 201-202 and 1080 per Menzies J (whether decision of officer to refuse air charter licence could properly be determined by government policy; contrast (1965) 113 CLR 177 at 204-206, [1965] ALR 1067 at 1082-1083 per Windeyer J); *R v Surrey County Council, ex p G and H* [1995] COD 50, (1994) Times, 24 May (parents not entitled to dictate form of educational assessment); *R v Birmingham City Justice, ex p Chris Foreign Foods (Wholesalers) Ltd* [[1970] 3 All ER 945, [1970] 1 WLR 1428 (justice's conduct in retiring to 'take advice' from two officials called into question whether decision taken was really his); *R v Parole Board, ex p Watson* [1996] 2 All ER 641 at 651, [1996] 1 WLR 906 at 916, CA, per Rose LJ (Parole Board having to make up its own mind and give its own reasons, not simply review Secretary of State's reasons for revocation of parole); *R v Secretary of State for the Environment, ex p Kirkstall Valley Campaign Ltd* [1996] 3 All ER 304 at 321, [1996] JPL 1042 at 1052 per Sedley J.

See *R v Waltham Forest London Borough Council, ex p Baxter* [1988] QB 419, [1987] 3 All ER 671, CA (fact that council member followed party line under whip system was not evidence that his discretion was fettered. However, if a member relinquishes his discretion and votes in accordance with mandate of party group, he will act unlawfully: see at 423 and 673 per Sir John Donaldson MR, and at 427 and 677 per Stocker LJ). See also *Bromley London Borough Council v GLC* [1983] 1 AC 768, [1982] 1 All ER 129, HL. Cf *R v Worthing Borough Council, ex p Burch* (1983) 50 P & CR 53 (indication of Secretary of State's view in planning case unlawful because local planning authority very likely to treat Secretary of State's view as decisive and accordingly will effectively deprive local people of opportunity to make representations at a local inquiry).

2 See eg the Civil Aviation Act 1982 ss 4-7 (s 7 as amended), s 68 (power of Secretary of State to give specific directions to Civil Aviation Authority as to exercise of licensing functions) (see **AIR LAW** vol 2 (2008) PARAS 51 et seq, 116); and the Goods Vehicles (Licensing of Operators) Act 1995 s 1(2) (power of Secretary of State to direct traffic commissioner with respect to road haulage vehicles) (see **ROAD TRAFFIC** vol 40(3) (2007 Reissue) para 1326). See also *Schmidt v Secretary of State for Home Affairs* [1969] 2 Ch 149, [1969] 1 All ER 904, CA (validity of minister's policy direction to exclude all alien Scientology students). A statutory power to issue directions must, however, be exercised in the prescribed form: *Simms Motor Units Ltd v Minister of Labour and National Service* [1946] 2 All ER 201, DC.

3 As where a minister refers a question to the cabinet for a decision. See also the observations of Windeyer J in *R v Anderson, ex p Ipec-Air Pty Ltd* (1965) 113 CLR 177 at 204-206, [1965] ALR 1067 at 1082-1083, Aust HC. However, where a discretion is vested in a named officer, the presumption is that he is to act according to his personal judgment: see note 1 supra.

UPDATE

30 Acting under dictation

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see PARA 196A.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/2. ADMINISTRATIVE POWERS/ (4) NON-EXERCISE OF POWERS OR DUTIES/31. Sub-delegation of powers.

31. Sub-delegation of powers.

In accordance with the maxim *delegatus non potest delegare*, a statutory power must be exercised only by the body or officer on whom it has been conferred¹, unless sub-delegation of the power is authorised by express words² or necessary implication³. There is a strong presumption against construing a grant of legislative⁴, judicial⁵, or disciplinary power⁶ as impliedly authorising sub-delegation; and the same may be said of any power to the exercise of which the designated body should address its own mind⁷. Even where a power to make

decisions is exercisable only by the delegate itself, however, considerations of practical convenience may justify entrusting powers to a committee or officers to conduct an investigation and to make recommendations as to the decision to be taken⁸.

A civil servant is his minister's alter ego, and a decision taken by a civil servant in the name of the minister or the department is not open to objection as a form of unauthorised sub-delegation⁹, provided at least that the servant has actual or implied authority so to act¹⁰. The courts will not seek to distinguish between those matters which are and those which are not so important as to demand the minister's personal attention¹¹. The powers of other public bodies are, in general, exercisable by their servants or agents¹². Local authority functions may be delegated either to officers or to committees or sub-committees of the authority¹³.

In general, a delegation of power does not imply a parting with authority¹⁴. The delegating body will retain not only power to revoke the grant¹⁵, but also power to act concurrently on matters within the area of delegated authority¹⁶ except in so far as it may already have become bound by an act of its delegate¹⁷. It would appear that an invalid act of the delegate encroaching on individual rights cannot be validated with retrospective effect by ratification¹⁸.

1 See eg *Great Northern Rly Co v Eastern Counties Rly Co* (1851) 9 Hare 306 at 311; *Head v Bush* (1865) 13 WR 651; *Ellis v Dubowski* [1921] 3 KB 621, DC; *Mills v LCC* [1925] 1 KB 213, DC; *Allingham v Minister of Agriculture and Fisheries* [1948] 1 All ER 780, DC; *Jackson, Stansfield & Sons v Butterworth* [1948] 2 All ER 558 at 564-566, CA, per Scott LJ; *H Lavender & Son Ltd v Minister of Housing and Local Government* [1970] 3 All ER 871, [1970] 1 WLR 1231; *R v Central Arbitration Committee, ex p Gloucestershire County Council* [1981] ICR 95 at 98, 79 LGR 412 at 416, DC, per Kilner Brown J; *R v Monopolies and Mergers Commission, ex p Argyll Group plc* [1986] 2 All ER 257, [1986] 1 WLR 763, CA; *R v DPP, ex p Association of First Division Civil Servants* (1988) 138 NLJ Rep 158, DC; *R v Tower Hamlets London Borough Council, ex p Khalique* [1994] 2 FCR 1074 at 1082, 26 HLR 517 at 525 per Sedley J; *R v Brent London Council, ex p Gladbaum Borough* (1989) 2 Admin LR 634, (1989) 88 LGR 627; *R v Ormskirk Justices, ex p Davies* [1995] COD 28, [1994] Crim LR 850, DC; *R v Cambridge Justices, ex p Peacock* [1993] COD 19, (1992) 156 JP 895, DC; *R v Secretary of State for Education, ex p Prior* [1994] ELR 231, [1994] ICR 877; *R v Harrow London Borough Council, ex p M* (1996) 95 LGR 736, (1996) 34 BMLR 12; *R v Croydon Justices, ex p WH Smith Ltd* [2000] 46 LS Gaz R 39, DC.

2 See eg the Local Government Act 1972 ss 101, 102 (both as amended) (statutory authorisation for local authorities to delegate certain functions to committees) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 370 et seq). See also the Emergency Powers (Defence) Act 1939 ss 1(3), 7 (repealed); and the Civil Service (Management Functions) Act 1992 (see **CONSTITUTIONAL LAW AND HUMAN RIGHTS** vol 8(2) (Reissue) para 552). The sub-delegation must be in the prescribed manner and form (cf *Customs and Excise Comrs v Cure and Deeley Ltd* [1962] 1 QB 340, [1961] 3 All ER 641), and there must have been a formal delegation of the power to the person or body which purports to exercise it (see eg *R v Liverpool City Council, ex p Professional Association of Teachers* (1984) 82 LGR 648). The primary delegate must not purport to vest in the sub-delegate powers properly exercisable only by himself: *Ratnagopal v A-G* [1970] AC 974, PC. Authority to delegate powers does not imply authority to delegate duties unless the two are inseparably interconnected: *Mungoni v A-G of Northern Rhodesia* [1960] AC 336, [1960] 1 All ER 446, PC. The delegate must keep within the bounds of the power actually delegated, which may be narrower than that possessed by the delegating authority; it will be no defence that that authority could, had it wished, have delegated wider power: *General Medical Council v United Kingdom Dental Board* [1936] Ch 41.

3 *Nelms v Roe* [1969] 3 All ER 1379, [1970] 1 WLR 4, DC (*Record Tower Cranes Ltd v Gisbey* [1969] 1 All ER 418, [1969] 1 WLR 148, DC, distinguished). Where it would be impracticable for all the powers and duties conferred upon a named person to be exercised and performed by a single individual, then it will readily be implied, in the case of administrative functions, that Parliament intended the actual machinery of performance to be in the hands of that person's staff: see *Provident Mutual Life Assurance Association v Derby City Council* [1981] 1 WLR 173, HL. Alternatively, it may be acceptable to lay down criteria and delegate the task of applying them to particular cases: see eg *R v Home Secretary, ex p Hickling* (1985) Times, 7 November, CA. Where an authority such as a colonial legislature is given plenary powers, they will normally include a general implied power to delegate: see eg *Shannon v Lower Mainland Dairy Products Board* [1938] AC 708, PC. Impliedly authorised delegation is often characterised as agency: see **AGENCY** vol 1 (2008) PARA 14.

4 See eg *King-Emperor v Benoari Lal Sarma* [1945] AC 14 at 24, [1945] 1 All ER 210 at 213, PC; *Geraghty v Porter* (1917) 36 NZLR 554; *A-G of Canada v Brent* [1956] SCR 318, 2 DLR (2d) 503, Can SC. But it may be held that there is no delegation of legislative power where the body on which the power is conferred lays down rules which are complete in themselves and merely confers upon another the power to declare them operative, wholly or in part: see *R v Burah* (1878) 3 App Cas 889 at 906, PC; *Russell v R* (1882) 7 App Cas 829 at 835, PC; *King-Emperor v Benoari Lal Sarma* supra.

5 *Caudle v Seymour* (1841) 1 QB 889; *R v Gateshead Justices, ex p Tesco Stores Ltd* [1981] QB 470, [1981] 1 All ER 1027, DC; *R v Manchester Stipendiary Magistrate, ex p Hill* [1983] 1 AC 328, [1982] 2 All ER 963, HL; cf *Re S (a barrister)* [1970] 1 QB 160, [1969] 1 All ER 949, Visitors to Gray's Inn.

6 Particularly where exercisable according to a procedure analogous to the judicial: *General Medical Council v United Kingdom Dental Board* [1936] Ch 41; *Barnard v National Dock Labour Board* [1953] 2 QB 18, [1953] 1 All ER 1113, CA; *Vine v National Dock Labour Board* [1957] AC 488, [1956] 3 All ER 939, HL. Contrast *Re S (a barrister)* [1970] 1 QB 160, [1969] 1 All ER 949, Visitors to Gray's Inn (disciplinary jurisdiction over barristers held not to be delegated but original).

7 See the cases on regulatory powers cited in note 1 supra. Aliter if a function is merely ministerial: *Allam & Co Ltd v Europa Poster Services Ltd* [1968] 1 All ER 826, [1968] 1 WLR 638. It may be acceptable for the body on which the power is conferred to delegate the decision making function in the generality of cases whilst retaining for itself the right to override the delegate's decision: see eg *R v GLC, ex p Blackburn* [1976] 3 All ER 184, [1976] 1 WLR 550, CA; cf *R v Lambeth London Borough Council, ex p Carroll* (1987) 20 HLR 142. See also para 32 post.

8 See para 107 post.

9 *Local Government Board v Arlidge* [1915] AC 120, HL; *Carltona Ltd v Works Comrs* [1943] 2 All ER 560, CA; *Point of Ayr Collieries Ltd v Lloyd-George* [1943] 2 All ER 546, CA; *West Riding County Council v Wilson* [1941] 2 All ER 827; *R v Skinner* [1968] 2 QB 700, [1968] 3 All ER 124, CA; *Re Golden Chemical Products Ltd* [1976] Ch 300, [1976] 2 All ER 543; and see *R v Holt* [1968] 3 All ER 802, [1968] 1 WLR 1942, CA; *R v Secretary of State for the Home Department, ex p Oladehinde* [1991] 1 AC 254, [1990] 3 All ER 393, HL; *Jordan Abiodun Iye v Secretary of State for the Home Department* [1994] Imm AR 63, CA; *Yousuf Odishu v Secretary for the Home Department* [1994] Imm AR 475, CA; *R v Secretary of State for Social Services, ex p Sherwin* (1996) 32 BMLR 1, DC; *R v Secretary of State for the Home Department, ex p Mensah* [1996] Imm AR 223; *Raghbir Singh v Secretary of State for the Home Department* [1996] Imm AR 507, CA; *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531, [1993] 3 All ER 92, HL. The official's act is not regarded as that of a delegate. It is therefore arguable that an official or junior minister who purports himself to take responsibility for the decision cannot take advantage of the principle: cf *R v Secretary of State for Trade, ex p Anderson Strathclyde plc* [1983] 2 All ER 233 at 237, DC, per Dunn LJ. A minister who delays his final decision (eg on an extradition order) until the matter has been debated in Parliament is not delegating his powers: *R v Governor of Brixton Prison, ex p Enahoro* [1963] 2 QB 455, [1963] 2 All ER 477, DC. Under the Deregulation and Contracting Out Act 1994 s 69, ministers may contract out certain of their functions: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 407.

10 As to the manner of conveying such authorisation see *Lewisham Metropolitan Borough and Town Clerk v Roberts* [1949] 2 KB 608, [1949] 1 All ER 815, CA; *Woollett v Minister of Agriculture and Fisheries* [1955] 1 QB 103, [1954] 3 All ER 529, CA; *Re Golden Chemical Products Ltd* [1976] Ch 300, [1976] 2 All ER 543 (departmental practice rather than express authorisation). Cf *Nelms v Roe* [1969] 3 All ER 1379, [1970] 1 WLR 4, DC (informal authorisation).

11 *Re Golden Chemical Products Ltd* [1976] Ch 300, [1976] 2 All ER 543.

12 See **AGENCY** vol 1 (2008) PARA 29 et seq; **CORPORATIONS** vol 9(2) (2006 Reissue) para 1115; **EMPLOYMENT** vol 39 (2009) PARA 6.

13 See the Local Government Act 1972 s 101(1), (2); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 370. There is no implied limitation on this power to delegate which prevents a local authority delegating to an officer consideration of a report which he has himself prepared: *R v Cardiff City Council, ex p Cross* (1983) 45 P & CR 156; cf *R v St Edmundsbury Borough Council, ex p Walton* [1999] 3 PLR 51, 11 Admin LR 648 (failure formally to delegate planning function to planning officer under the Local Government Act 1972 s 101 held unlawful); *Crédit Suisse v Waltham Forest London Borough Council* [1997] QB 362, [1996] 4 All ER 176, CA (the powers provided by the Local Government Act 1972 s 101 are very limited and do not entitle a local housing authority to discharge any of its functions by means of a partly owned company). A single member of the authority cannot constitute a committee or sub-committee for this purpose: *R v Secretary of State for the Environment, ex p Hillingdon London Borough Council* [1986] 1 All ER 810, [1986] 1 WLR 192 (affd [1986] 2 All ER 273, [1986] 1 WLR 807, CA); *R v Secretary of State for Education and Science, ex p Birmingham City Council* (1984) 83 LGR 79; *R v Schools Appeals Tribunal of the Wakefield Diocesan Board of Education, ex p J* (1999) 1 LGLR 216. Nor does the Local Government Act 1972 s 101 (as amended) empower delegation by an education committee to an officer: *R v Birmingham City Council, ex p National Union of Public Employees* (1984) Times, 24 April. See also *Provident Mutual Life Assurance Association v Derby City Council* [1981] 1 WLR 173, HL; *Fitzpatrick v Secretary of State for the Environment* (1988) Times, 29 December, CA; *R v Newbury District Council, ex p Chieveley Parish Council* [1998] EGCS 131, 10 Admin LR 676, CA (distinction between lawful acceptance of advice and unlawful delegation of a decision making function). The Deregulation and Contracting Out Act 1994 s 70 enables local authorities to employ contractors to carry out some of their functions where that seems sensible. The Local

Government Act 2000 provides for the creation of new cabinet-style executive bodies within local authorities: see s 11. The functions for which these new executive bodies will have responsibility (see s 13) may be delegated, for example, to officers of the authority, although the precise scope and nature of that delegation will depend on the type of executive arrangement adopted by the local authority: see ss 14-16. Under the Greater London Authority Act 1999, the elected mayor of London has power to delegate the discharge of functions to a number of bodies and persons including the deputy mayor, any member of staff of the authority and any local authority: see s 38. See further **LONDON GOVERNMENT** vol 29(2) (Reissue) para 168.

14 This principle has been given statutory force in the context of local authorities: see the Local Government Act 1972 s 101(4); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 370. See further *Winder v Cambridgeshire County Council* (1978) 76 LGR 549, CA. Contra *Blackpool Corpn v Locker* [1948] 1 KB 349 at 377-378, [1948] 1 All ER 85 at 96, CA, per Scott and Asquith LJ; but this view is at variance with basic principles.

15 A local authority can revoke the appointment of an individual committee member: *Manton v Brighton Corpn* [1951] 2 KB 393, [1951] 2 All ER 101.

16 *Huth v Clarke* (1890) 25 QBD 391. See also the Local Government Act 1972 s 101(4); and **LOCAL GOVERNMENT** vol 69 (2009) PARA 370.

17 As where a contract is entered into by a committee or person lawfully vested with delegated powers: *Battelley v Finsbury Borough Council* (1958) 56 LGR 165.

18 This proposition might be invoked in support of the decision in *Blackpool Corpn v Locker* [1948] 1 KB 349, [1948] 1 All ER 85, CA, although the court rested its decision on other grounds. See also *Co-Operative Retail Services Ltd v Taff-Ely Borough Council* [1979] JPL 466, 39 P & CR 223, CA; affd (1981) 42 P & CR 1, HL (council could not ratify purported grant of planning permission by district clerk, since ultra vires act could not be ratified; quare whether in any case council had power to grant planning permission).

UPDATE

31 Sub-delegation of powers

NOTE 13--1994 Act s 70 amended: Local Government and Public Involvement in Health Act 2007 s 239(1).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/2. ADMINISTRATIVE POWERS/ (4) NON-EXERCISE OF POWERS OR DUTIES/32. Fettering discretion by own rules.

32. Fettering discretion by own rules.

A public body endowed with a statutory discretion may legitimately adopt general rules or principles of policy to guide itself as to the manner of exercising its own discretion in individual cases, provided that such rules or principles are legally relevant to the exercise of its powers¹, consistent with the purpose of the enabling legislation² and not arbitrary, capricious or unjust³. Nevertheless, it must not disable itself from exercising a genuine discretion in a particular case directly involving individual interests⁴; hence it must be prepared to consider making an exception to the general rule if the circumstances of the case warrant special treatment⁵. These propositions, evolved mainly in the context of licensing and other regulatory powers, have been applied to other situations, for example the award of discretionary investment grants⁶, the allocation of pupils to different classes of schools⁷, and the exercise of discretion by ministers in various circumstances⁸. In accordance with these principles, a political group with control of a council may adopt a policy, so long as it is not rigidly adhered to without consideration of individual cases⁹. The amplitude of a discretionary power may, however, be so wide that the competent authority may be impliedly entitled to adopt a fixed rule never to exercise its

discretion in favour of a particular class of person¹⁰, and such a power may be expressly conferred by statute¹¹. In the case of some wide discretionary powers, the authority may be required to devise a policy in order to exercise its discretion with proper consistency¹². Where a body has devised a policy or a rule, it will generally be obliged to have regard to that policy in exercising its discretion¹³.

1 Cf *R v Metropolitan Police Comr, ex p Randall* (1911) 27 TLR 505, DC; *R v Port of London Authority, ex p Kynoch Ltd* [1919] 1 KB 176 at 184, CA, per Bankes LJ (policy adopted by tribunal must be adopted for 'reasons which the tribunal may legitimately entertain'); *R v Rotherham Licensing Justices, ex p Chapman* [1939] 2 All ER 710, DC, as explained in *R v Torquay Licensing Justices, ex p Brockman* [1951] 2 KB 784, [1951] 2 All ER 656, DC; *R v Birmingham Licensing Planning Committee, ex p Kennedy* [1972] 2 QB 140, [1972] 2 All ER 305, CA; *A-G (ex rel Tilley) v Wandsworth London Borough Council* [1981] 1 All ER 1162, [1981] 1 WLR 854, CA; *R v Rochdale Metropolitan Borough Council, ex p Cromer Ring Mill Ltd* [1982] 3 All ER 761; *Gillick v West Norfolk and Wisbech Area Health Authority* [1986] AC 112, [1985] 3 All ER 402, HL; *R v Oxford, ex p Levey* (1986) Times, 1 November, CA. A fetter on a discretion derived from Crown prerogative will cause decisions made pursuant to it to be quashed: *R v Criminal Injuries Compensation Board, ex p RJC (an infant)* (1978) 122 Sol Jo 95, DC.

2 See para 82 post.

3 *Cummings v Birkenhead Corpn* [1972] Ch 12 at 37-38, [1971] 2 All ER 881 at 885-886, CA, per Lord Denning MR; *R v Paddington and St Marylebone Rent Tribunal, ex p Bell London and Provincial Properties Ltd* [1949] 1 KB 666, [1949] 1 All ER 720, DC, as explained in *R v Barnet and Camden Rent Tribunal, ex p Frey Investments Ltd* [1972] 2 QB 342, [1972] 1 All ER 1185, CA; *Elliott v Brighton Borough Council* (1980) 79 LGR 506, CA; *R v Secretary of State for the Home Department, ex p Handscomb* (1987) 86 Cr App Rep 59, DC (cf *Re Findlay* [1985] AC 318, [1984] 3 All ER 801, HL; *R v Secretary of State for the Home Department, ex p Benson* (1988) Times, 21 November, DC); *R v Secretary of State for the Home Department, ex p Norney* (1995) 7 Admin LR 861, (1995) Times, 6 October. As to the duty not to adopt an inflexible policy see eg *R v Secretary of State for the Home Department, ex p Venables* [1997] 1 All ER 327 at 348, 350, [1997] 2 WLR 67 at 90, 92, CA, per Lord Woolf MR; *R v Secretary of State for the Environment, ex p Brent London Borough Council* [1982] QB 593 at 643, [1983] 3 All ER 321 at 354, DC, per Ackner LJ; *R v Army Board of the Defence Council, ex p Anderson* [1992] QB 169, [1991] 3 All ER 375, DC (inflexible policy not to have oral hearings); *R v Tower Hamlets London Borough Council, ex p Khalique* [1994] 2 FCR 1074 at 1083, 26 HLR 517 at 526 per Sedley J; *R v Newham London Borough Council, ex p Dada* [1996] QB 507 at 516, [1995] 2 All ER 522 at 530, CA, per Glidewell LJ; *R v Brent London Borough Council, ex p Baruwa* [1997] 3 FCR 97, 29 HLR 915, CA; *R v Ministry of Agriculture Fisheries and Food, ex p Hamble (Offshore) Fisheries Ltd* [1995] 2 All ER 714 at 722, [1995] 1 CMLR 533 at 542 per Sedley J; *R v Secretary of State for the Environment, ex p Kirkstall Valley Campaign Ltd* [1996] 3 All ER 304 at 321, [1996] JPL 1042 at 1052 per Sedley J; *R v Secretary of State for Education and Employment, ex p Portsmouth Football Club Ltd* [1998] COD 142 (refusal of footballer's work permit flawed by over-rigid policy, notwithstanding affidavit evidence indicating that decision taken on correct basis); *R v North West Lancashire Health Authority, ex p A* [2000] 1 WLR 977, [1999] Lloyds Rep Med 339, CA (unlawful for health authority, whilst acknowledging trans-sexualism as an illness, to fail to deal with it as such and operate a blanket ban on treatment); *R v Secretary of State for the Home Department, ex p Jammeh* (1997) 10 Admin LR 1, (1997) Times, 11 September (Secretary of State's policy of prohibiting employment of those asylum-seekers granted temporary admission to the United Kingdom irrational and hence unlawful); *Porter v Magill* [2000] 2 WLR 1420, [1999] LGR 375, CA. Cf *R v Secretary of State for Trade and Industry, ex p Duddridge* [1995] Env LR 151 at 164, DC, per Smith J ('If the government announces a policy which it intends to adopt without being under an obligation to do so, it must be entitled to define the limits of that policy in any way it wishes'). See also on the legality of the Ministry of Defence's policy of excluding practising homosexuals from the armed forces *R v Ministry of Defence, ex p Smith* [1996] QB 517, [1996] 1 All ER 257, CA; *Smith and Grady v United Kingdom* (1999) 29 EHRR 493, ECtHR.

4 This principle embraces the principles set out in paras 29-31 ante, 33 post. It also precludes a statutory tribunal exercising discretionary powers from cleaving rigorously to its own precedents (*Merchandise Transport Ltd v British Transport Commission* [1962] 2 QB 173 at 186, [1961] 3 All ER 495 at 500, CA, per Sellers LJ, and at 192-193 and 506-507 per Devlin LJ) and it denies the legal efficacy of a fixed rule adopted by a local authority or the police not to prosecute for a particular type of offence (*Yabbicom v King* [1899] 1 QB 444, DC; *R v Metropolitan Police Comr, ex p Blackburn* [1968] 2 QB 118, [1968] 1 All ER 763, CA; though cf *Buckoke v GLC* [1971] 1 Ch 655, [1971] 2 All ER 254, CA; *R v Oxford, ex p Levey* (1986) Times, 1 November, CA). A policy guideline may itself be the subject of judicial review: see para 63 post.

5 The leading authorities are *R v Port of London Authority, ex p Kynoch Ltd* [1919] 1 KB 176 at 184, CA, per Bankes LJ; and *British Oxygen Co Ltd v Minister of Technology* [1971] AC 610, [1970] 3 All ER 165, HL. See also *R v Walsall Justices* (1854) 3 WR 69; *Tinkler v Wandsworth Board of Works* (1858) 27 LJ Ch 342; *R v Sylvester* (1862) 31 LJMC 93; *Wood v Widnes Corpn* [1898] 1 QB 463, CA; *R v Barry District Council, ex p Jones* (1900) 16 TLR 565, DC; *R v LCC, ex p Corrie* [1918] 1 KB 68, DC; *R v Torquay Licensing Justices, ex p Brockman* [1951] 2

KB 784, [1951] 2 All ER 656, DC; *R v Flintshire County Council County Licensing (Stage Plays) Committee, ex p Barrett* [1957] 1 QB 350, [1957] 1 All ER 112, CA; *Stringer v Minister of Housing and Local Government* [1971] 1 All ER 65, [1970] 1 WLR 1281; *Sagnata Investments Ltd v Norwich Corp'n* [1971] 2 QB 614, [1971] 2 All ER 1441, CA; *Roberts v Dorset County Council* (1976) 75 LGR 462; *Smith v Inner London Education Authority* [1978] 1 All ER 411, CA; *R v Torbay Licensing Justices, ex p White* [1980] 2 All ER 25, DC; *R v Secretary of State for the Environment, ex p Halton Borough Council* (1983) 82 LGR 662; *Eastleigh Borough Council v Betts* [1983] 2 AC 613, [1983] 2 All ER 1111, HL; *R v Windsor Licensing Justices, ex p Hodes* [1983] 2 All ER 551, [1983] 1 WLR 685, CA; *GLC v Secretary of State for the Environment* [1983] JPL 793; *Gransden & Co Ltd v Secretary of State for the Environment* (1985) 54 P & CR 86 (affd (1986) 54 P & CR 361, CA); *Re Findlay* [1985] AC 318, [1984] 3 All ER 801, HL; *R v Mansfield Justices, ex p Sharkey* [1985] QB 613, [1985] 1 All ER 193, DC (magistrates had not fettered their discretion regarding the imposition of conditions on bail by acceding to police applications for such conditions in 90% of cases); *R v Lambeth London Borough Council, ex p Ghous* [1993] COD 302; *R v Hampshire County Council, ex p W* [1994] ELR 460 at 475-476, Times, 9 June per Sedley J; *R v Cumbria County Council, ex p P* [1995] ELR 337 at 345, [1995] COD 267 at 268 per Schiemann J (individual must be given chance to persuade decision maker); *R v Ministry of Agriculture, Fisheries and Food, ex p Hamble (Offshore) Fisheries Ltd* [1995] 2 All ER 714 at 722, [1995] 1 CMLR 533 at 542 per Sedley LJ; *R v Law Society, ex p Reigate Projects Ltd* [1993] 1 WLR 1531, [1992] 3 All ER 232, DC; *R v Warwickshire County Council, ex p Williams* [1995] ELR 326, Independent, 15 February; *R v Lambeth London Borough Council, ex p Njomo* (1996) 28 HLR 737 at 744-745, (1996) Times, 11 April per Sedley J (although policy with built-in exceptions was not unlawful, it was applied too rigidly because exceptions treated as exhaustive); *R v Southwark London Borough Council, ex p Udu* [1996] ELR 390, (1995) 8 Admin LR 25, CA (local authority entitled to have general policy of not funding courses at private colleges and post-graduate courses, subject to 'exceptional cases'); *R v Secretary of State for the Home Department, ex p Sheik* [2001] 6 LS Gaz R 46, (2000) Times, 22 December, CA. See also *Macbeth v Ashley* (1874) LR Sc & Div 352 at 357 (consistent refusal of applications might justify the inference that the authority has adopted an unavowed fetter on its discretion); *R v London Boroughs Grants Committee, ex p Greenwich London Borough Council* (1986) 84 LGR 781; *R v Secretary of State for the Home Department, ex p Bennett* (1986) Times, 18 August, CA; *R v Secretary of State for Transport, ex p Sheriff & Sons Ltd* (1986) Times, 18 December; *R v Canterbury City Council, ex p Gillespie* (1987) 19 HLR 7; *R v Inner London Education Authority, ex p F (an infant)* [1988] COD 100, Times, 16 June; *R v Warwickshire County Council, ex p Collymore* [1995] ELR 217, [1995] COD 52. Guidance issued by another body may amount to a fetter on the discretion of the body with the relevant power: *R v Worthing Borough Council, ex p Burch* (1983) 50 P & CR 53; and see *R v Police Complaints Board, ex p Madden* [1983] 2 All ER 353, [1983] 1 WLR 447 (Police Complaints Board obliged by statute to have regard to guidance issued by the Secretary of State, but should not treat such guidance as fettering its own discretion); *R v City of Sunderland, ex p Baumber* [1996] COD 211 (educational psychologists' discretion to consult under regulations improperly fettered by instructions issued to them by employer authority); see further para 31 ante.

It has been suggested that the mere appearance that a body's discretion had been improperly fettered would be sufficient for its decision to be ultra vires (*Steeple v Derbyshire County Council* [1984] 3 All ER 468, [1985] 1 WLR 256); but this has not been followed in subsequent cases, in which evidence of an improper fetter operating in fact has been required: *R v Amber Valley District Council, ex p Jackson* [1984] 3 All ER 501, [1985] 1 WLR 298; *R v Sevenoaks District Council, ex p Terry* [1985] 3 All ER 226; *Smith v Skinner* [1986] RVR 45 at 55, DC, per Glidewell LJ (affd sub nom *Lloyd v McMahon* [1987] AC 625, [1987] 1 All ER 1118, CA and HL); *R v Waltham Forest London Borough Council, ex p Baxter* [1988] QB 419, [1987] 3 All ER 671, CA (local authority councillor entitled to give weight to views of party colleagues and party whip but could not abdicate responsibility by voting blindly in favour of party policy); *Lothian Borders and Angus Co-Operative Society Ltd v Scottish Borders Council* [1999] 2 PLR 19, Times, 10 March, Outer House.

Where a body proposes to exercise its discretion in accordance with a policy, it may be obliged to disclose details of the policy to persons affected (*R v Criminal Injuries Compensation Board, ex p Ince* [1973] 3 All ER 808 at 816, [1973] 1 WLR 1334 at 1345, CA, per Megaw LJ), and failure to give reasons for a departure from the body's own policy may indicate that its reasons for a decision were defective (*Reading Borough Council v Secretary of State for the Environment and Commercial Union Properties (Investments) Ltd* (1985) 52 P & CR 385). See also para 82 post.

6 *British Oxygen Co Ltd v Minister of Technology* [1971] AC 610, [1970] 3 All ER 165, HL.

7 *Cumings v Birkenhead Corp'n* [1972] Ch 12, [1971] 2 All ER 881, CA. See also *R v Merionethshire Justices* (1844) 6 QB 163; *R v Glamorganshire Justices* (1850) 19 LJMC 172; *Re Wood's Application* (1952) 2 P & CR 238, DC (discretion in awarding costs); *Kilmarnock Magistrates v Secretary of State for Scotland* 1961 SC 350 (minister's discretion in deciding whether to approve appointment to office of chief constable); *Enderby Town Football Club Ltd v Football Association Ltd* [1971] Ch 591 at 605-606, [1971] 1 All ER 215 at 218, CA, per Lord Denning MR (domestic tribunal's power to allow legal representation; but cf at 607-608 and 220 per Fenton Atkinson LJ); *R v Secretary of State for the Environment, ex p Reinisch* (1970) 70 LGR 126, DC (discretion in awarding costs).

8 As in *Stringer v Minister of Housing and Local Government* [1971] 1 All ER 65, [1970] 1 WLR 1281; *Schmidt v Secretary of State for Home Affairs* [1969] 2 Ch 149, [1969] 1 All ER 904, CA; *British Oxygen Co Ltd v Minister of Technology* [1971] AC 610, [1970] 3 All ER 165, HL; *R v Secretary of State for the Environment, ex p*

Brent London Borough Council [1982] QB 593, [1982] 2 WLR 693, DC; *R v Secretary of State for Transport, ex p Cumbria County Council* [1983] RTR 129, CA; *Re Findlay* [1985] AC 318, [1984] 3 All ER 801, HL; *R v Secretary of State for the Home Department, ex p Handscomb* (1987) 86 Cr App Rep 59, DC; *R v Secretary of State for the Home Department, ex p Ahmed Tabet* [1994] Imm AR 468; *R v Ministry of Agriculture Fisheries and Food, ex p Hamble (Offshore) Fisheries Ltd* [1995] 2 All ER 714, [1995] 1 CMLR 533; *R v Secretary of State for the Home Department, ex p Hastrup* [1996] Imm AR 616, Times, 15 August, CA; *R v Secretary of State for the Home Department, ex p Venables* [1997] 1 All ER 327 at 348, [1997] 2 WLR 67 at 90, CA, per Lord Woolf MR; *R v Secretary of State for the Home Department, ex p Stroud* [1993] COD 75, (1992) Times, 19 August. See also *R v Secretary of State for Trade and Industry, ex p Duddridge* [1995] Env LR 151; *R v Ministry of Defence, ex p Smith* [1996] QB 517, [1996] 1 All ER 257, CA; *Smith and Grady v United Kingdom* (1999) 29 EHRR 493, ECtHR.

9 *R v Amber Valley District Council, ex p Jackson* [1984] 3 All ER 501, [1985] 1 WLR 298; *R v Waltham Forest London Borough Council, ex p Waltham Forest Ratepayers Action Group* (1987) Times, 31 July, DC; affd sub nom *R v Waltham Forest London Borough Council, ex p Baxter* [1988] QB 419, [1987] 3 All ER 671, CA; and see *R v Bradford Metropolitan Council, ex p Wilson* [1990] 2 QB 375n, [1989] 3 All ER 140, DC; *R v Bradford Metropolitan Council, ex p Corris* [1990] 2 QB 363, [1989] 3 All ER 156, CA; cf *Bromley London Borough Council v GLC* [1983] 1 AC 768 at 829-831, [1982] 1 All ER 129 at 165-166, HL, per Lord Diplock, and at 853 and 182 per Lord Brandon of Oakbrook (a political group would fail properly to exercise its discretion if it considered itself bound to implement its election manifesto); *R v Derbyshire County Council, ex p Times Supplements Ltd* (1990) 3 Admin LR 241 at 249 per Watkins LJ, (1990) Times, 19 July, DC; *R v Secretary of State for the Environment, ex p Kirkstall Valley Campaign Ltd* [1996] 3 All ER 304, [1996] JPL 1042; *Porter v Magill* [2000] 2 WLR 1420 at 1449, [1999] LGR 375 at 339, CA, per Schiemann LJ.

10 *Schmidt v Secretary of State for Home Affairs* [1969] 2 Ch 149, [1969] 1 All ER 904, CA (refusal to extend entry permits for alien Scientology students). See also *British Oxygen Co Ltd v Minister of Technology* [1971] AC 610 at 630-631, [1970] 3 All ER 165 at 175, HL, per Viscount Dilhorne (policy in making investment grants); *R v Secretary of State for the Environment, ex p Friends of the Earth Ltd* (1995) 7 Admin LR 793, Times, 8 June, CA.

11 See eg *R v Herrod, ex p Leeds City Council* [1976] QB 540, [1976] 1 All ER 273, CA; affd [1978] AC 403, [1976] 3 All ER 709, HL.

12 *Re Findlay* [1985] AC 318 at 335, [1984] 3 All ER 801 at 828, HL, per Lord Scarman; and see *Sharp v Wakefield* [1891] AC 173 at 179, HL, per Lord Halsbury LC (discretion must be exercised according to reason and justice, not arbitrarily); *R v Windsor Licensing Justices, ex p Hodes* [1983] 2 All ER 551 at 557, [1983] 1 WLR 685 at 693, CA, per Slade LJ; *Eastleigh Borough Council v Betts* [1983] 2 AC 613 at 627-628, [1983] 2 All ER 1111 at 1119, HL, per Lord Brightman; *R v Hertfordshire County Council, ex p Cheung* (1986) Times, 4 April, CA (cardinal principle of good public administration that all persons in a similar position should be treated similarly); *R v Secretary of State for the Home Department, ex p Stroud* [1993] COD 75, (1992) Times, 19 August (policy to ensure consistency); *R v Bexley London Borough Council, ex p Jones* [1994] COD 393; *R v Secretary of State for the Home Department, ex p Venables* [1997] 1 All ER 327 at 348, [1997] 2 WLR 67 at 90, CA, per Lord Woolf MR ('The Home Secretary's discretion is very wide. It is the type of discretion that calls out for the development of policy as to the way in which it would in general be exercised. This would assist in providing consistency and certainty which are highly desirable in an area involving the administration of justice where fairness is particularly important').

13 See paras 85, 92 post.

UPDATE

32 Fettering discretion by own rules

NOTE 3--*Porter*, cited, reversed, sub nom *Porter v Magill; Weeks v Magill* [2001] UKHL 67, [2002] 2 AC 357.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/2. ADMINISTRATIVE POWERS/ (4) NON-EXERCISE OF POWERS OR DUTIES/33. Undertaking not to exercise a power.

33. Undertaking not to exercise a power.

Public bodies cannot disable themselves by deed, grant or contract from fulfilling their obligations to exercise their powers and duties for public purposes; and an agreement or undertaking which purports to impose or would have the effect of imposing such a fetter is void¹. This is not to say that in no circumstances can a public body enter into a binding contract restricting the exercise of a statutory discretion; the contract will be void only if it is incompatible with the proper discharge of a public responsibility².

One consequence of the general rule is that contracts and covenants entered into by the Crown are subject to an implied term reserving to the Crown its overriding powers exercisable for the public good³.

1 *Ayr Harbour Trustees v Oswald* (1883) 8 App Cas 623, HL; *R v Leake Inhabitants* (1833) 5 B & Ad 469; *Paterson v Provost of St Andrews* (1881) 6 App Cas 833, HL; *Re South Eastern Rly Co and Wiffin's Contract* [1907] 2 Ch 366; *County Hotel and Wine Co Ltd v London and North Western Rly Co* [1918] 2 KB 251, CA (affd on other grounds [1921] 1 AC 85, HL); *York Corpn v Henry Leetham & Sons Ltd* [1924] 1 Ch 557; *Birkdale District Electric Supply Co Ltd v Southport Corpn* [1926] AC 355, HL; *Sunderland Corpn v Priestman* [1927] 2 Ch 107; *Maritime Electric Co Ltd v General Dairies Ltd* [1937] AC 610, [1937] 1 All ER 748, PC; *Re Heywoods' Conveyance, Cheshire Lines Committee v Liverpool Corpn* [1938] 2 All ER 230; *British Transport Commission v Westmorland County Council* [1958] AC 126, [1957] 2 All ER 353, HL; *Blake v Hendon Corpn* [1962] 1 QB 283, [1961] 3 All ER 601, CA; *Re Staines UDC's Agreement, Triggs v Staines UDC* [1969] 1 Ch 10, [1968] 2 All ER 1; *R v Liverpool Corpn, ex p Liverpool Taxi Fleet Operators' Association* [1972] 2 QB 299, [1972] 2 All ER 589, CA; *Devonport Borough Council v Robbins* [1979] 1 NZLR 1, NZ CA; *Windsor and Maidenhead Royal Borough Council v Brandrose Investments Ltd* [1983] 1 All ER 818, [1983] 1 WLR 509, CA; *R v Hammersmith and Fulham London Borough Council, ex p Beddowes* [1987] QB 1050, [1987] 1 All ER 369, CA; *R v Secretary of State for the Home Department, ex p Fire Brigades Union* [1995] 2 AC 513, [1995] 2 All ER 244, HL (Home Secretary could not disable himself from ability to bring statutory scheme into effect by adopting alternative scheme having consequence that statutory scheme 'will not now be implemented').

Hence a local authority cannot enter into a binding contract not to make or enforce a byelaw (*William Bean & Sons Ltd v Flaxton RDC* [1929] 1 KB 450, CA; *William Cory & Son Ltd v London Corpn* [1951] 2 KB 476, [1951] 2 All ER 85, CA), or to refuse to grant, or to revoke, planning permission in respect of land (*Ransom and Luck Ltd v Surbiton Borough Council* [1949] Ch 180, [1949] 1 All ER 185, CA; *Stringer v Minister of Housing and Local Government* [1971] 1 All ER 65, [1970] 1 WLR 1281). As to whether a local authority may agree not to exercise the local authority's powers embodied in a schedule to a private Act see *Kirklees Metropolitan Borough Council v Yorkshire Woollen District Transport Co Ltd* (1978) 77 LGR 448. See further para 179 post; and **CORPORATIONS; HIGHWAYS, STREETS AND BRIDGES; LOCAL GOVERNMENT** vol 69 (2009) PARA 460 et seq; **TOWN AND COUNTRY PLANNING**.

As to the effect of estoppel see para 23 ante.

2 *Birkdale District Electric Supply Co Ltd v Southport Corpn* [1926] AC 355, HL. See also *Stourcliffe Estates Co Ltd v Bournemouth Corpn* [1910] 2 Ch 12, CA; *Rederiaktiebolaget Amphitrite v R* [1921] 3 KB 500; *Dowty Boulton Paul Ltd v Wolverhampton Corpn* [1971] 2 All ER 277, [1971] 1 WLR 204 (undertakings lawfully given in exercise of one statutory power not invalid merely because they would qualify exercise of another power); *British Railways Board v Glass* [1965] Ch 538, [1964] 3 All ER 418, CA; see, however, *Dowty Boulton Paul Ltd v Wolverhampton Corpn (No 2)* [1973] Ch 94, [1972] 2 All ER 1073 (affd [1976] Ch 13, [1973] 2 All ER 491, CA), where the decision in the *Dowty Boulton Paul Ltd v Wolverhampton Corpn* supra case was not followed. See also *Storer v Manchester City Council* [1974] 3 All ER 824, [1974] 1 WLR 1403, CA; *Gibson v Manchester City Council* [1979] 1 All ER 972, [1979] 1 WLR 294, HL.

3 *Crown Lands Comrs v Page* [1960] 2 QB 274, [1960] 2 All ER 726, CA, especially per Devlin LJ (at 291-294 and 735-736) (statutory requisitioning power exercisable by Crown against its tenant). As to the extent to which the Crown may be bound by contract see further *Rederiaktiebolaget Amphitrite v R* [1921] 3 KB 500; and paras 10, 23 ante, 187 post.

3. NON-JUDICIAL REDRESS IN RESPECT OF ADMINISTRATIVE ACTION

(1) POLITICAL AND ADMINISTRATIVE SAFEGUARDS

34. Petitions.

A person claiming to be aggrieved by an act or omission of an organ or officer of the central government may petition the Sovereign¹ or either House of Parliament². One seeking to obtain a pardon in respect of a criminal conviction or sentence may petition the Crown through the Secretary of State for the Home Department³.

1 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 419.

2 Erskine May *Parliamentary Practice* (22nd Edn) (1997) pp 809-817. Under the standing orders of the House of Commons, when a member introduces a petition complaining of a personal grievance calling for urgent redress, the matter may be debated forthwith (HC Standing Orders (Public Business) (2001) no 155); other petitions are ordered to lie on the Table and be printed, and are transmitted by the Clerk of the House to a minister. Any observations made by a minister or ministers in reply to such a petition are laid upon the Table by the Clerk of the House and are printed (HC Standing Orders (Public Business) (2001) no 156). The practice with regard to petitions (other than those relating to judicial or private business or a claim to a peerage of Ireland) is governed in the House of Lords by HL Standing Orders (1999) no 74. See further PARLIAMENT vol 78 (2010) PARAS 861, 977.

3 See *Hay v Tower Division of London Justices* (1890) 24 QBD 561; *R v McMahon* (1978) 68 Cr App Rep 18, CA; *Stafford v DPP* [1974] AC 878, [1973] 3 All ER 762, HL; *R v Conway* (1979) 70 Cr App Rep 4, CA; *R v Chard* [1984] AC 279, [1983] 3 All ER 637, HL. See also *R v Secretary of State for the Home Department, ex p Bentley* [1994] QB 349, [1993] 4 All ER 442; and para 63 post. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 823 et seq; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) para 1978.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/3. NON-JUDICIAL REDRESS IN RESPECT OF ADMINISTRATIVE ACTION/(1) POLITICAL AND ADMINISTRATIVE SAFEGUARDS/35. Parliamentary proceedings.

35. Parliamentary proceedings.

Members of the public often address complaints to members of Parliament. If the matter lies within an area of ministerial responsibility, the member may write or speak to the minister and, if no satisfactory answer is forthcoming, pursue the matter by means of a parliamentary question. Failure to obtain satisfaction at question time may lead subsequently to a debate on a motion for the daily adjournment of the House of Commons, when the member will be able to pursue criticisms on the floor of the House. If the issue is thought to be serious enough, it may be the subject of a motion of censure or a debate on a supply day¹. Alternatively, a motion may be moved to constitute a judicial tribunal of inquiry²; or ministers may be persuaded to appoint a judge or another person or a committee of Privy Counsellors to conduct a non-statutory ad hoc inquiry into a matter of serious public concern³.

Appointment of a select committee of either House of Parliament to inquire into the circumstances of an individual case, as distinct from a special problem, is now extremely uncommon. The select committees appointed under standing or sessional orders are concerned mainly with particular fields of administration and only concern themselves incidentally with cases in which abuses of power relating to aggrieved members of the public are alleged⁴.

Where a proposal to enable executive action to be taken is expressed in the form of a Bill, the measure may be debated in the House. Where such action is expressed in the form of a

subordinate legislative instrument, the form and scope of parliamentary control will depend mainly on the wording of the enabling Act. A question may be put to the minister responsible for making the instrument. If an instrument falling within the definition of a statutory instrument⁵ is required to be laid or laid in draft before the House of Commons, it must lie before the House for 40 days⁶. If the Act further provides that the instrument is subject to annulment in pursuance of a resolution of either House, any member may move a prayer to annul the instrument (or to prevent it from coming into force) within 40 days⁷. If the Act provides that the instrument is to have effect, or continue in force, only if approved by a resolution of one House or both Houses within a prescribed period, parliamentary time must be found for a motion to be moved⁸. Most classes of statutory instruments are scrutinised by the Joint Committee on Statutory Instruments⁹. However, instruments which are directed by Act of Parliament to be laid before and be subject to proceedings in the House of Commons only are examined by the Commons Select Committee on Statutory Instruments¹⁰.

Deregulation orders¹¹ are excluded from consideration by the Joint Committee on Statutory Instruments¹². Such orders are examined by the House of Commons Deregulation Committee¹³ and the Delegated Powers and Deregulation Committee of the House of Lords¹⁴. These committees examine proposals for deregulation orders¹⁵ and draft deregulation orders laid before Parliament¹⁶.

1 See further CONSTITUTIONAL LAW AND HUMAN RIGHTS; PARLIAMENT vol 78 (2010) PARA 806.

2 lie under the Tribunals of Inquiry (Evidence) Act 1921. An example is the *Public inquiry into the shootings at Dunblane Primary School on 13 March 1996* (1996) Cm 3386 chaired by Lord Cullen. See also para 13 ante.

3 Eg the judicial inquiry conducted by Sir Richard Scott into the 'Arms to Iraq affair': see *Report of the Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecutions* (HC Paper (1995-96) no 115) (the 'Scott Report').

4 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 227; PARLIAMENT vol 78 (2010) PARAS 872 et seq, 979 et seq. The statement in the text applies less to the House of Commons Select Committee on Public Administration (established in 1997 by HC Standing Orders (1997) no 146, replacing the House of Commons Select Committee on the Parliamentary Commissioner for Administration) (see para 41 post) and to the House of Commons Select Committee on Standards and Privileges (see PARLIAMENT vol 78 (2010) PARA 988) than to most of the other select committees.

5 See the Statutory Instruments Act 1946 s 1 (as amended); the Statutory Instruments Regulations 1947, SI 1948/1; and STATUTES vol 44(1) (Reissue) para 1503.

6 See the Statutory Instruments Act 1946 ss 4, 6, 7 (s 4 amended by the Statutory Instruments (Production and Sale) Act 1996 s 1(1)(a)); the Laying of Documents before Parliament (Interpretation) Act 1948; HC Standing Orders (Public Business) (2001) nos 159, 160; and *R v Immigration Appeal Tribunal, ex p Joyles* [1972] 3 All ER 213, [1972] 1 WLR 1390, DC.

7 See the Statutory Instruments Act 1946 ss 5, 6, 7. See also HC Standing Orders (Public Business) (2001) no 17 (question normally to be put not later than 11.30 pm). This is the most common form of parliamentary control but, in the Commons, debates on statutory instruments are generally held in standing committee rather than on the floor of the House (see Erskine May *Parliamentary Practice* (22nd edn) (1997) pp 578, 583).

8 However, under HC Standing Orders (2001) no 118, all statutory instruments subject to this procedure automatically stand referred to a Standing Committee on Delegated Legislation unless notice is given by a minister of a motion that the instrument is not to stand so referred or the instrument is referred to the Scottish or Northern Irish Grand Committee. On 12 November 1969 the then Home Secretary successfully moved that draft Orders in Council to implement the recommendations of the constituency Boundary Commissioners be not approved: 791 HC Official Report (5th series), 12 November 1969, cols 428-571.

9 As its name implies, this is a joint committee of the House of Commons and the House of Lords. It was first appointed in February 1973 (see LJ (1972-3) 161; CJ 1972-73) 141; HC Standing Orders (Public Business) (1997) no 151). No motion for an affirmative resolution in connection with any instrument may be moved in the House of Lords until the report of the Joint Committee on Statutory Instruments has been laid before the House (HL Standing Orders (1999) no 72). No similar rule applies to the House of Commons, however; such instruments are automatically referred to a Commons Standing Committee on Delegated Legislation (see note 8

supra). As to the Joint Committee on Statutory Instruments see PARLIAMENT vol 34 (Reissue) para 946. As to the Commons Standing Committee on Delegated Legislation see PARLIAMENT vol 34 (Reissue) para 806.

10 For the terms of reference of these committees see STATUTES vol 44(1) (Reissue) para 1519, where the rules relating to publication and printing of subordinate legislation are also considered. Not all forms of subordinate legislation come within the definition of statutory instruments; eg Immigration Rules, local byelaws and prerogative instruments fall outside it. See also the Statutory Orders (Special Procedure) Acts 1945 and 1965 (orders subject to 'special parliamentary procedure'); and PARLIAMENT vol 34 (Reissue) para 912 et seq. As to challenging delegated legislation see para 65 post.

11 The orders made by a minister under the Deregulation and Contracting Out Act 1994. Under the Deregulation and Contracting Out Act 1994 a minister has power to make orders to amend or repeal any Act of Parliament, passed before the end of the 1993-94 parliamentary session, in order to remove or reduce a statutory burden on a trade, business, profession or individual, provided that the minister is satisfied that the amendment or repeal would not remove any necessary protection: see s 1; and PARLIAMENT vol 34 (Reissue) para 947.

12 See HC Standing Orders (Public Business) (2001) no 151(1)(A).

13 See HC Standing Orders (Public Business) (2001) no 141. As to the House of Commons Deregulation Committee see PARLIAMENT vol 34 (Reissue) para 947.

14 See HL Standing Orders (Public Business) (1999) no 72. As to the Delegated Powers and Deregulation Committee see PARLIAMENT vol 34 (Reissue) para 739.

15 Such documents are laid before Parliament under the Deregulation and Contracting Out Act 1994 s 3(3) (as amended): see PARLIAMENT vol 34 (Reissue) para 947.

16 Such draft orders are laid before Parliament under ibid s 1(4). As to the procedure see PARLIAMENT vol 34 (Reissue) para 947.

UPDATE

35 Parliamentary proceedings

NOTE 2--1921 Act repealed: Inquiries Act 2005 s 49, Sch 3.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/3. NON-JUDICIAL REDRESS IN RESPECT OF ADMINISTRATIVE ACTION/(1) POLITICAL AND ADMINISTRATIVE SAFEGUARDS/36. Illustrations of other safeguards.

36. Illustrations of other safeguards.

Complaints about the conduct of statutory tribunals and inquiries may be addressed to the Council on Tribunals, which has power to investigate and report on them¹. Complaints by persons claiming to have sustained injustice in consequence of maladministration by central government departments and their officers may be forwarded by members of Parliament for investigation and report by the Parliamentary Commissioner for Administration². Similar complaints relating to local government and the Health Service may be investigated by the local commissioners³ and the Health Service Commissioners respectively⁴. There is a statutory procedure prescribed for the investigation of complaints against the police whereby an inquiry may be conducted by the local police authority⁵, a chief constable⁶ or the Police Complaints Authority⁷, and there may be subsequent criminal or disciplinary proceedings⁸. The Secretary of State may cause a special inquiry to be held into the conduct of a police force⁹.

Apart from enactments which provide rights of appeal to courts against administrative decisions¹⁰, various Acts make provision for appeals to higher administrative authorities¹¹ or to

statutory tribunals¹² against such decisions, or for the exercise of default powers by a minister upon a complaint that a public authority has failed to carry out a duty¹³. It is also common for Acts to impose on the competent authorities duties to consult with¹⁴ or give notice to interested persons or bodies before taking a decision¹⁵; and to empower those persons or bodies, or members of the public generally, to lodge objections against an administrative proposal¹⁶ or make representations concerning an application to an administrative body¹⁷, and in some instances to appear at a hearing or inquiry before the proposal is approved or a final decision is made¹⁸.

1 See the Tribunals and Inquiries Act 1992 s 1; and para 56 post. As to the Council on Tribunals see paras 55-57 post.

2 See the Parliamentary Commissioner Act 1967 ss 4-6 (s 4 as substituted; ss 4-6 as amended); and paras 41-44 post.

3 See the Local Government Act 1974 ss 23-24 (as amended); paras 46-49 post; and LOCAL GOVERNMENT vol 69 (2009) PARA 839 et seq.

4 See the Health Service Commissioners Act 1993 ss 3-6 (as amended); and para 54 post.

5 Ie in the case of complaints against senior officers: see the Police Act 1996 s 68 (as amended); and POLICE.

6 Ie in the case of complaints against officers other than senior officers: see ibid s 69; and POLICE.

7 There is provision in certain circumstances for informal resolution of complaints relating to less serious matters: see ibid s 69(3), (4); the Police (Complaints) (Dispensation from requirement to investigate) Regulations 1990, SI 1990/1301; and POLICE. As to the Police Complaints Authority see POLICE vol 36(1) (2007 Reissue) para 316 et seq.

8 The Police Act 1996 Pt IV (ss 65-88) (as amended) provides for the Police Complaints Authority to undertake the investigation or supervision of the investigation of more serious complaints and to receive reports of investigations undertaken by chief constables and police authorities: see POLICE. See also the Police (Complaints) (General) Regulations 1985, SI 1985/520; the Police (Complaints) (Informal Resolution) Regulations 1985, SI 1985/671; the Police (Anonymous, Repetitious etc Complaints) Regulations 1985, SI 1985/672; the Police (Complaints) (Mandatory Referrals etc) Regulations 1985, SI 1985/673; the Police (Conduct) Regulations 1999, SI 1999/730 (as amended); the Police (Conduct) (Senior Officers) Regulations 1999, SI 1999/731 (as amended); and POLICE.

9 See the Police Act 1996 s 49; and POLICE. An example is the *Stephen Lawrence inquiry* (1999) Cm 4262 chaired by Sir William Macpherson.

10 See para 72 post.

11 See eg the Town and Country Planning Act 1990 ss 78 (as amended), 79(2) (appeals from local planning authorities to Secretary of State against refusal of or conditions attached to grants of planning permission) (see TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) para 833); and the Planning (Hazardous Substances) Act 1990 s 21 (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) para 1287). As to the impact of the Human Rights Act 1998 on the planning appeals procedure see *Alconbury Developments Ltd v Secretary of State for the Environment, Transport and the Regions* (12 December 2000, unreported), DC (the role of the Secretary of State in the planning application procedure infringed the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) Cmd 8969) art 6 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 134-147)); *County Properties Ltd v Scottish Ministers* 2000 SLT 965.

12 See eg the Social Security Act 1998 s 6 (as amended) (appeal to a unified appeal tribunal for review of decision of social security official on a benefit claim) (see SOCIAL SECURITY AND PENSIONS). See also *A-G v British Broadcasting Corp* [1981] AC 303, [1980] 3 All ER 161, HL.

13 See eg the Education Act 1996 s 497 (as amended) (see EDUCATION vol 15(1) (2006 Reissue) para 58); cf *Bradbury v London Borough of Enfield* [1967] 3 All ER 434, [1967] 1 WLR 1311, CA (Secretary of State's power to give directions to local education authorities under the Education Act 1944 s 99 (repealed)); *R v Secretary of State for Education, ex p Prior* [1994] ICR 877, [1994] COD 197 (Secretary of State's power to give directions under the Education Act 1944 s 44 (repealed) in matters of private law, such as the dismissal of a teacher by the governing body of a grant-maintained school, where there have been serious irregularities); *R v Secretary of State for Education and Employment, ex p W* [1998] ELR 413, [1998] COD 112 (Secretary of State has a power,

but not a duty, to issue a direction under the Education Act 1996 s 497 and the court will not intervene unless his decision was so unreasonable that no Secretary of State could sensibly make it). See further EDUCATION.

14 See eg the School Standards and Framework Act 1998 s 89(2) for the duty of a school's admissions authority to consult with specified bodies such as the local education authority and the admissions authorities for schools in that area before determining the admissions arrangements which will apply for that particular school year (see EDUCATION vol 15(1) (2006 Reissue) para 398). See also the Education (Determining School Admission Arrangements for the Initial Year) Regulations 1998, SI 1998/3165; the Education (Relevant Areas for Consultation on Admission Arrangements) Regulations 1999, SI 1999/124; the Education (Determination of Admission Arrangements) Regulations 1999, SI 1999/126; and EDUCATION vol 15(1) (2006 Reissue) para 398.

For the meaning of consultation, see eg *Rollo v Minister of Town and Country Planning* [1948] 1 All ER 13, CA; *Re Union of Benefices of Whippingham and East Cowes, St James, Derham v Church Comrs for England* [1954] AC 245, [1954] 2 All ER 22, PC; *Port Louis Corp v A-G of Mauritius* [1965] AC 1111, PC; *Sinfield v London Transport Executive* [1970] Ch 550 at 558, [1970] 2 All ER 264 at 269, CA, per Sachs LJ; *Agricultural, Horticultural and Forestry Industry Training Board v Aylesbury Mushrooms Ltd* [1972] 1 All ER 280, [1972] 1 WLR 190; *R v Brent London Borough Council, ex p Gunning* (1985) 84 LGR 168; *R v Gwent County Council, ex p Bryant* [1988] COD 19, CA; *R v Gateshead Metropolitan Borough Council, ex p Nichol* [1988] COD 97, CA; *R v Secretary of State for Wales, ex p South Glamorgan County Council* [1988] COD 104; *R v Governors of Haberdashers' Aske's Hatcham Schools, ex p Inner London Education Authority* [1989] COD 435, CA; *R v Governors of Bacon's School, ex p Inner London Education Authority* [1990] COD 414, DC; *R v Birmingham City Council, ex p Kaur* [1991] COD 21, DC; *R v Warwickshire District Council, ex p Bailey* [1991] COD 284; *R v Lambeth London Borough Council, ex p N* [1996] ELR 299, Times, 11 June; and see paras 24 ante, 93 post.

15 As to the giving of notice see eg the Police Act 1996 s 33 (as amended) (see POLICE vol 36(1) (2007 Reissue) para 197); and the School Standards and Framework Act 1998 ss 28-30 (see EDUCATION vol 15(1) (2006 Reissue) paras 132-135). See also *Bradbury v Enfield London Borough Council* [1967] 3 All ER 434, [1967] 1 WLR 1311, CA; *Lee v Secretary of State for Education and Science* (1967) 66 LGR 211; *Legg v Inner London Education Authority* [1972] 3 All ER 177, [1972] 1 WLR 1245; *Wilson v Secretary of State for the Environment* [1974] 1 All ER 428, [1973] 1 WLR 1083; *Coney v Choyce* [1975] 1 All ER 979, [1975] 1 WLR 422 (cf *Mukta Ben v Suva City Council* [1980] 1 WLR 767, PC); *R v St Edmundsbury Borough Council, ex p Investors in Industry Commercial Properties Ltd* [1985] 3 All ER 234, [1985] 1 WLR 1168; *R v Brent London Borough Council, ex p Gunning* (1985) 84 LGR 168; *R v Lambeth London Borough Council, ex p Sharp* (1984) 50 P & CR 284.

16 See eg the School Standards and Framework Act 1998 s 90; the Education (Objections to Admission Arrangements) Regulations 1999, SI 1999/125; and EDUCATION vol 15(1) (2006 Reissue) para 400. As to the right of objection see generally para 15 ante. Such a right is almost invariably granted to persons injuriously affected by compulsory purchase orders: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 563.

17 Eg representations which may be made in respect of applications for planning permission: see the Town and Country Planning Act 1990 s 323 (as amended); the Town and Country Planning (Appeals) (Written Representations Procedure) Regulations 1987, SI 1987/701 (revoked in relation to England); the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892; the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628; and TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) para 627 et seq.

18 See the Town and Country Planning (Appeals) (Written Representations Procedure) Regulations 1987, SI 1987/701, reg 3(3) (revoked in relation to England); the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 3(3); the Town and Country Planning Act 1990 Sch 6 paras 2(2), 3(4) (as amended); and TOWN AND COUNTRY PLANNING vol 46(2) (Reissue) para 624.

UPDATE

36 Illustrations of other safeguards

NOTE 3--Local Government Act 1974 s 24 repealed: Local Government and Housing Act 1989 Sch 12 Pt II.

NOTES 5-8--1996 Act Pt IV repealed: Police Reform Act 2002 Sch 8. As to investigation of complaints against the police see now Pt 2 (ss 9-29); and POLICE vol 36(1) (2007 Reissue) PARA 316 et seq.

NOTE 8--SI 1999/730, SI 1999/731 now replaced by Police (Conduct) Regulations 2008, SI 2008/2864.

TEXT AND NOTE 9--Police Act 1996 s 49 repealed: Inquiries Act 2005 ss 48(1), 49(2), Sch 2 para 14, Sch 3. As to inquiries generally see PARA 15A.

NOTE 11--*Alconbury*, cited, reversed: [2001] UKHL 23, [2001] 2 All ER 929, [2001] 2 WLR 1389 (right to judicial review of Secretary of State's decision rendering powers of Secretary of State compatible with right to fair trial under European Convention art 6); applied in *County Properties*, cited, reversed: 2001 SLT 1125, Inner House.

NOTES 14, 16--School Standards and Framework Act 1998 s 89(2) substituted, s 90 amended: Education Act 2002 Sch 4 paras 5, 6 (in force in relation to England: SI 2002/2439).

NOTE 14--SI 1998/3165 revoked: SI 2007/3009. SI 1999/126 replaced: Education (Determination of Admission Arrangements) (Wales) Regulations 2006, SI 2006/174; School Admissions (Admission Arrangements) (England) Regulations 2008, SI 2008/3089 (amended by SI 2009/1099). See also *R (on the application of Morris) v Newport City Council* [2009] EWHC 3051 (Admin), [2009] All ER (D) 102 (Dec), (2010) Times, 5 January.

NOTE 16--SI 1999/125 replaced: Education (Objections to Admissions Arrangements) (Wales) Regulations 2006, SI 2006/176; School Admissions (Admission Arrangements) (England) Regulations 2008, SI 2008/3089 (amended by SI 2009/1099).

NOTES 17, 18--SI 1987/701 replaced, in relation to Wales: Town and Country Planning (Referrals and Appeals) Written Representations Procedure (Wales) Regulations 2003, SI 2003/390. SI 2000/1628 replaced: Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009, SI 2009/452.

NOTE 17--SI 1999/1892 amended: SI 2003/390 (Wales), SI 2008/2260, SI 2008/3202 (England).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/3. NON-JUDICIAL REDRESS IN RESPECT OF ADMINISTRATIVE ACTION/(1) POLITICAL AND ADMINISTRATIVE SAFEGUARDS/37. Public corporations.

37. Public corporations.

The supervision of public corporations has, since the privatisation of the nationalised industries, changed from primarily parliamentary control to a system of regulation and control by independent regulators or regulatory bodies¹. The degree of ministerial and parliamentary control over public corporations depends on the context and the terms of the instrument under which the corporation has been constituted.

Among the safeguards afforded to the general public is a right to make representations to consumer or consultative councils or committees associated with individual industries².

¹ See para 18 ante. The postal service provides an instructive example of this change from parliamentary to regulatory control. The Post Office Act 1969 changed the postal service from a government department (that of Postmaster General) to a public corporation which was subject to general ministerial control and supervision by means of the Secretary of State's power to give general directions in the national interest (see ss 11, 12 (both as amended; prospectively substituted)). The Postal Services Act 2000 provides for the conversion of the Post Office from a public corporation to a public limited company under the Companies Act 1985, the ownership of which remains with the Crown. Under the Post Office Act 2000, the provision of postal services will be supervised by an independent regulatory body, the Postal Services Commission (see s 1, Sch 1). In addition to its regulatory function, the Postal Services Commission is under a statutory duty to ensure the provision of a universal postal service (see s 3). However, a residual degree of ministerial control is retained through the

Secretary of State's power to give directions in the interests of national security (see s 101). See further POST OFFICE.

2 See eg the Utilities Act 2000 s 2, Sch 2 (creating the Gas and Electricity Consumer Council and abolishing the Gas Consumers' Council established under the Gas Act 1986 s 2 (now repealed) and the consumers' committees established under the Electricity Act 1989 s 2: see FUEL AND ENERGY vol 19(1) (2007 Reissue) para 716 et seq); the Postal Services Act 2000 s 2, Sch 2 (creating the Consumer Council for Postal Services and abolishing the Post Office Users' National Council and the Post Office Users' Council for Wales: see POST OFFICE); the Telecommunications Act 1984 ss 1 (as amended), 3(2)(a) (establishing the Director General of Telecommunications: see TELECOMMUNICATIONS vol 97 (2010) PARA 88 et seq); the Water Industry Act 1991 ss 1-5 (as amended), Sch 1 (duties of Director General of Water Services: see WATER AND WATERWAYS vol 100 (2009) PARAS 13, 109 et seq); and the Pension Schemes Act 1993 Pt X (ss 145-152) (as amended) (establishing the Pensions Ombudsman: see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) para 663 et seq).

UPDATE

37 Public corporations

NOTE 2--Gas and Electricity Consumer Council replaced by National Consumer Council: National Consumer Council: see FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 716 et seq. Consumer Council for Postal Services replaced by National Consumer Council: see POST OFFICE vol 36(2) (Reissue) PARA 36-51.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/3. NON-JUDICIAL REDRESS IN RESPECT OF ADMINISTRATIVE ACTION/(1) POLITICAL AND ADMINISTRATIVE SAFEGUARDS/38. Local authorities.

38. Local authorities.

As has been indicated¹, the range of ministerial powers in relation to local authorities is extensive. Nevertheless, consultations between the responsible ministers (in particular, the Secretary of State for the Environment, Transport and the Regions²) and local authority associations or representatives of individual local authorities are an established feature of the governmental process. If dissatisfaction on the part of local authorities with departmental policies cannot be given adequate expression through the normal channels, use may be made of publicity and pressure exerted indirectly through members of Parliament³.

Among the rights available to local inhabitants to facilitate scrutiny of the conduct of their local authorities are the rights to attend meetings of the local authority⁴, to inspect copies of its minutes and other documents⁵, and to appear before the auditor in order to raise objections to items in the accounts⁶.

1 See para 18 ante.

2 See CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 452 et seq.

3 A local authority is not, however, permitted to publish any material, or give financial or other assistance towards the publication of material, which in whole or in part appears to be designed to affect public support for a political party: Local Government Act 1986 s 2 (amended by the Local Government Act 1988 s 27). See also *R v Inner London Education Authority, ex p Westminster City Council* [1986] 1 All ER 19, [1986] 1 WLR 28, and *R v GLC, ex p Westminster City Council* (1985) Times, 22 January (both decided prior to the enactment of the Local Government Act 1986). As to local authorities' power to take account of political, party political or electoral advantage generally see *R v Waltham Forest London Borough Council, ex p Baxter* [1988] QB 419, [1987] 3 All ER 671, CA; *R v Liverpool City Council, ex p Secretary of State for Employment* [1989] COD 404, 154 JPN 118, DC; *Porter v Magill* [2000] 2 WLR 1420, [1999] LGR 375, CA; *R v Local Commissioner for Administration in North and North-East England, ex p Liverpool City Council* [2000] LGR 571, CA.

4 See the Local Government Act 1972 ss 100 (as amended), 100A-100K (as added and amended); and the Public Bodies (Admission to Meetings) Act 1960; and, in the case of local authorities operating executive arrangements under the Local Government Act 2000 Pt II (ss 10-48), see the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 7. See further LOCAL GOVERNMENT vol 69 (2009) PARA 674. Exclusion of the public is permitted on limited grounds: see paras 39-40 post.

5 See the Local Government Act 1972 ss 100B, 100C, 100D, 100H (all as added; s 100D as added and amended), s 228 (as amended); the Audit Commission Act 1998 s 15; and LOCAL GOVERNMENT vol 69 (2009) PARAS 539, 661-665, 770.

6 See the Audit Commission Act 1998 s 15; and LOCAL GOVERNMENT vol 69 (2009) PARA 770.

UPDATE

38-43 Local authorities ... Government departments, corporations and unincorporated bodies subject to investigation

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

38 Local authorities

NOTE 3--Local Government Act 1986 s 2 further amended: Communications Act 2003 s 349(3). *Porter*, cited, reversed: [2001] UKHL 67, [2002] 2 AC 357.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/3. NON-JUDICIAL REDRESS IN RESPECT OF ADMINISTRATIVE ACTION/(1) POLITICAL AND ADMINISTRATIVE SAFEGUARDS/39. Meetings of principal councils.

39. Meetings of principal councils.

The following requirements apply to principal councils¹, which for these purposes include non-metropolitan county councils, district councils, London borough councils, a county council or county borough council in relation to Wales, joint authorities, the London Fire and Emergency Planning Authority², the Common Council of the City of London³, the Broads Authority⁴, national park authorities⁵, joint boards or joint committees which are constituted under any enactment as a body corporate and which discharge functions of two or more principal councils, police authorities⁶, the Service Authority for the National Crime Squad⁷, the Metropolitan Police Authority⁸ and combined fire authorities⁹, and to committees and sub-committees of principal councils¹⁰. With modifications, the requirements also apply to community health councils¹¹ and community health committees¹².

Meetings of principal councils, their committees and sub-committees are normally open to the public¹³. However, the public must be excluded from a meeting of a principal council, a committee or sub-committee during an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that confidential information¹⁴ would be disclosed to them if they were present during the item, in breach of the obligation of confidence¹⁵. Further, a principal council, committee or sub-committee may by resolution exclude the public from a meeting whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if they were present during the

item, there would be disclosure to them of exempt¹⁶ information¹⁷, for example information relating to a present or former employee, to any particular applicant for or recipient or former recipient of any service provided by the principal council, to the adoption, care, fostering or education of any particular child, to any terms proposed or to be proposed by or to the authority under any particular contract for the acquisition of property or the supply of goods or services, or to the identity of a protected informant¹⁸, and, where a local authority is taking decisions under executive arrangements¹⁹, the advice of a political adviser or assistant²⁰.

When a local authority²¹ is operating executive arrangements, it is for the local authority executive to decide which of its meetings, and which of the meetings of any committee of the executive, are to be open to the public and which of these meetings are to be held in private²².

While a meeting is open to the public, the principal council, committee or sub-committee in question has no power to exclude a member of the public from the meeting²³, and duly accredited representatives of newspapers²⁴ must be afforded reasonable facilities for taking their report of the proceedings, and, unless the meeting is held in premises not belonging to the council or not on the telephone, for telephoning the report at their own expense²⁵. Any principal council, committee or sub-committee subject to these requirements is entitled, however, to exclude people in order to suppress or prevent disorderly conduct or other misbehaviour at a meeting²⁶.

Public notice of the time and place of a meeting must be given by posting it at the council's offices at least three clear days before, or, if the meeting is convened at shorter notice, at the time it is convened²⁷. The public must also have longer advance notification of key matters that are to be dealt with under executive arrangements²⁸. Where a local authority is not operating executive arrangements, copies of the agenda for a meeting and copies of reports for the meeting (except the whole or part of any report which the proper officer considers relates to an item during which, in his opinion, the meeting will not be open to the public²⁹) must be open to inspection by the public at the council's offices three clear days before the meeting³⁰. A list of the background papers for any report or part of a report made open to inspection must be included with each copy of the report and at least one copy of each background paper on this list must also be made open to inspection³¹.

Where a meeting, or any part of it, is made open to the public, a reasonable number of copies of the agenda, and of such reports or parts of reports as have been made open to inspection, must be made available for the use of the public at the meeting³².

On request and on payment of postage or other necessary charge for transmission, any newspaper must be supplied with a copy of the agenda and of such reports or parts of reports as have been made open to inspection, and with such further statements or particulars, if any, as are necessary to indicate the nature of the items included in the agenda, and if the proper officer thinks fit, copies of any other documents supplied to members of the council, in connection with an item³³.

After a meeting of a principal council, committee or sub-committee (1) the minutes³⁴ (excluding so much of the minutes of proceedings during which the meeting was not open to the public as discloses exempt information); (2) a copy of the agenda of the meeting; and (3) a copy of so much of the report for the meeting as relates to any item during which the meeting was open to the public, must be open to inspection by members of the public at the council offices until the expiration of the period of six years beginning with the date of the meeting³⁵. Where, in consequence of the exclusion of parts of the minutes which disclose exempt information, the minutes open to inspection do not provide members of the public with a reasonably fair and coherent record of the whole or part of the proceedings, the proper officer must make a written summary of the proceedings, or part thereof, which provides such a record without disclosing the exempt information³⁶. Such a summary must remain available to inspection for six years³⁷. Where background papers are required to be open to inspection, they must remain so until the expiration of the period of four years from the date of the meeting³⁸.

Where a document is required to be open to inspection it must be so open at all reasonable hours and (except in the case of background papers³⁹) no charge may be made for inspection⁴⁰. If, without reasonable excuse, a person having the custody of a document which is required to be open to inspection by the public intentionally obstructs any person exercising a right to inspect or make a copy from the document or refuses to furnish copies to any person entitled to obtain them, he commits an offence and is liable on summary conviction to a fine⁴¹. The publication, pursuant to these requirements, of a document which is made open to inspection or supplied to a member of the public or is supplied for the benefit of a newspaper enjoys qualified privilege⁴².

1 See the Local Government Act 1972 Pt VA (ss 100A-100K) (as added and amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 661 et seq. Principal councils are defined in the Local Government Act 1972 ss 270(1), 100E, 100J (ss 100E, 100J as added and amended): see LOCAL GOVERNMENT vol 69 (2009) PARAS 23, 661. Different requirements apply to local authorities when taking decisions through executive arrangements under the Local Government Act 2000 Pt II (ss 10-48): see *infra*; and LOCAL GOVERNMENT vol 69 (2009) PARA 303 et seq. Access to meetings was formerly governed by the Public Bodies (Admission to Meetings) Act 1960 (which still applies to other public authorities): see para 40 post; and *R v Brent Health Authority, ex p Francis* [1985] QB 869 at 878, [1985] 1 All ER 74 at 80.

Each principal council must keep at its offices a summary of the rights to attend meetings and to inspect and copy documents which are conferred by the Local Government Act 1972 Pt VA (as added and amended): s 100G(3) (added by the Local Government (Access to Information) Act 1985 s 1(1)). Members of principal councils are granted additional rights to inspect documents: Local Government Act 1972 s 100F (added by the Local Government (Access to Information) Act 1985 s 1(1)). See further LOCAL GOVERNMENT vol 69 (2009) PARA 666. In respect of decisions taken under executive arrangements see the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, regs 17-20; and LOCAL GOVERNMENT vol 69 (2009) PARAS 652-653, 671, 677. At common law, a member is entitled to see any document which is in the possession of an authority of which he is a member if sight of the document is reasonably necessary to enable him to discharge his functions as a member of that authority: see *R v Barnes Borough Council, ex p Conlan* [1938] 3 All ER 226, 36 LGR 524, DC; *R v Lancashire County Council Police Authority, ex p Hook* [1980] QB 603, sub nom *R v Clerk to Lancashire Police Committee, ex p Hook* [1980] 2 All ER 353, CA; *Birmingham City District Council v O* [1983] 1 AC 578, [1983] 1 All ER 497, HL. See LOCAL GOVERNMENT vol 69 (2009) PARA 539.

As to publicity of other aspects of local authority functions see the Local Government Act 1972 s 142 (as amended); the Local Government, Planning and Land Act 1980 ss 2-4 (as amended); the Local Government Act 1986 Pt II (ss 2-6) (as amended); in respect of decisions taken under executive arrangements, the Local Government Act 2000 s 22; and the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272. See further LOCAL GOVERNMENT vol 69 (2009) PARA 641 et seq. As to publicity of judicial proceedings see para 109 post.

2 As to the London Fire and Emergency Planning Authority see FIRE SERVICES vol 18(2) (Reissue) para 17; LONDON GOVERNMENT vol 29(2) (Reissue) para 217.

3 As to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) para 51 et seq.

4 As to the Broads Authority see WATER AND WATERWAYS vol 101 (2009) PARA 734.

5 As to national park authorities see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 526 et seq.

6 As to a police authority established under the Police Act 1996 s 3: see POLICE vol 36(1) (2007 Reissue) para 139.

7 As to the Service Authority for the National Crime Squad see POLICE vol 36(1) (2007 Reissue) para 430 et seq.

8 As to the Metropolitan Police Authority see POLICE vol 36(1) (2007 Reissue) paras 137, 147 et seq.

9 Local Government Act 1972 s 100J(1) (added by the Local Government (Access to Information) Act 1985 s 1(1); and amended by the Education Reform Act 1988 s 237, Sch 13 Pt I; the Norfolk and Suffolk Broads Act 1988 s 21, Sch 6 para 10(5); the Police and Magistrates' Courts Act 1994 s 43, Sch 4 Pt I para 9(2); the Environment Act 1995 s 63, Sch 7 para 12(2)(a); the Police Act 1996 s 103, Sch 7 para 1(2)(h); the Police Act 1997 s 88, Sch 6 para 4(2); and the Greater London Authority Act 1999 ss 313(1), (2), 331(1), (2)), Local Government Act 1972 s 100J(2) (as so added; amended by the Greater London Authority Act 1999 s 331(1), (3)). As to combined fire authorities see FIRE SERVICES vol 18(2) (Reissue) para 24 et seq.

10 Local Government Act 1972 s 100E(1) (s 100E added by the Local Government (Access to Information) Act 1985 s 1(1)). Committees and sub-committees are defined for these purposes in the Local Government Act 1972 s 100E(3) (as added and amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 661. Minor modifications are made to the application of Pt VA (as added and amended) in respect of committees and sub-committees: see s 100E(2) (as added); and LOCAL GOVERNMENT vol 69 (2009) PARA 664.

11 Community Health Councils (Access to Information) Act 1988 s 1(1). As to community health councils see HEALTH SERVICES vol 54 (2008) PARA 74 et seq.

12 Ibid s 1(2), (3).

13 Local Government Act 1972 s 100A(1) (s 100A added by the Local Government (Access to Information) Act 1985 s 1(1)). For the different requirements for publicity when decisions are taken under executive arrangements see the text and notes 19-22 *infra*.

14 'Confidential information' means: (1) information furnished to the council by a government department upon terms (however expressed) which forbid the disclosure of the information to the public; and (2) information the disclosure of which to the public is prohibited by or under any enactment or by the order of a court; and, in either case, the reference to the obligation of confidence is to be construed accordingly: Local Government Act 1972 s 100A(3) (as added: see note 13 *supra*). See also the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21. As to confidential information generally see further CONFIDENCE AND DATA PROTECTION.

15 Local Government Act 1972 s 100A(2) (as added: see note 13 *supra*). See also the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21(a).

16 As to the categories of exempt information see the Local Government Act 1972 s 100I, Sch 12A (as added and amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 643. See also the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21(b).

17 Local Government Act 1972 s 100A(4) (as added: see note 13 *supra*). The resolution must state the proceedings or part of proceedings to which the resolution applies and state the description of the exempt information concerned: s 100A(5) (as so added). See also the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21(2).

18 See the Local Government Act 1972 Sch 12A (as added and amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 643.

19 Executive arrangements are arrangements by a local authority for and in connection with the creation and operation of an executive of the authority and under which certain functions of the authority are the responsibility of the executive: Local Government Act 2000 s 10. The executive may take the form of (1) a directly elected mayor who appoints two or more councillors to the executive; (2) an executive leader, elected by the full council, plus two or more councillors appointed by the leader or the council; or (3) a directly elected mayor with an officer of the authority appointed by the council as a council manager: see ss 11, 12; and LOCAL GOVERNMENT vol 69 (2009) PARA 327 et seq.

20 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21; and LOCAL GOVERNMENT vol 69 (2009) PARA 646. A 'political adviser or assistant' means a person appointed pursuant to the Local Government and Housing Act 1989 s 9 (as amended) (assistants for political groups) or regulations made under the Local Government Act 2000 s 23, Sch 1 para 6 (mayor's assistant) (see LOCAL GOVERNMENT vol 69 (2009) PARAS 328, 333): Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 2.

21 ie a county council or district council, or a London borough council: *ibid* reg 2.

22 Local Government Act 2000 s 22(2). See also the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 7.

23 Local Government Act 1972 s 100A(6)(b) (as added: see note 13 *supra*).

24 'Newspaper' includes news agency and radio and television news organisations: see *ibid* s 100K(1) (as added and amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 661.

25 *Ibid* s 100A(6)(c) (as added: see note 13 *supra*). There is, however, no obligation on a council to permit photography or television or radio coverage or recording of its meetings: s 100A(7) (as so added). See also the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21(6).

26 Local Government Act 1972 s 100A(8) (as added: see note 13 supra). See also the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 21(1)(d); and LOCAL GOVERNMENT vol 69 (2009) PARA 646 et seq; see also the Public Meeting Act 1908; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 584. See *R v Brent Health Authority, ex p Francis* [1985] QB 869, [1985] 1 All ER 74; *R v Brent London Borough Council, ex p Assegai* (1987) Times, 12 June (natural justice requires that a person be permitted to make representations before he is excluded from a meeting on the ground of disruptive behaviour).

27 Local Government Act 1972 s 100A(6) (as added: see note 13 supra). See also *R v Swansea City Council, ex p Elitestone Ltd* [1993] 2 PLR 65, 66 P & CR 442, CA (three clear days excludes days other than working weekdays, so that Saturday and Sunday are excluded, and, in addition, excludes the day of publication and the day of the meeting).

28 See the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, regs 12, 13; and LOCAL GOVERNMENT vol 69 (2009) PARAS 672, 675.

29 Local Government Act 1972 s 100B(2) (s 100B added by the Local Government (Access to Information) Act 1985 s 1(1)).

30 Local Government Act 1972 s 100B(1), (3) (as added: see note 29 supra). The documents may be made open to inspection at a later stage if the meeting is convened less than three days before it takes place, if the material is added late, or if copies have not yet been made available to members of the council: see s 100B(3) (as so added). Any excluded reports or parts of reports must be marked 'Not for publication' and the nature of the exempt information must be specified: see s 100B(5) (as so added). See further LOCAL GOVERNMENT vol 69 (2009) PARA 662.

If a copy of the agenda containing an item (or the item itself) has not been made available for inspection three clear days in advance (or when the meeting was convened, if convened less than three days in advance), the item of business may not be considered at the meeting unless the chairman of the meeting is of the view that the matter is urgent by reason of special circumstances (which he must specify in the minutes): s 100B(4) (as so added). See *R v Swansea City Council, ex p Elitestone Ltd* [1993] 2 PLR 65, 66 P & CR 442, CA (this is a requirement in the public interest and must be observed regardless of the lack of prejudice to any specific individual).

31 Local Government Act 1972 s 100D(1) (s 100D added by the Local Government (Access to Information) Act 1985 s 1(1); Local Government Act 1972 s 100D(1) (as so added) substituted by the Local Government Act 2000 s 97(1)). In the case of executive arrangements see the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 6. Background papers are those documents relating to the subject matter of a report which: (1) disclose any facts or matters on which, in the opinion of the proper officer, the report or an important part of it is based; and (2) have in his opinion been relied on to a material extent in preparing the report but do not include any published works: Local Government Act 1972 s 100D(5) (as so added). A background paper is open for inspection if arrangements exist for its production to members of the public as soon as is reasonably practicable after a request for inspection: see s 100D(3) (as so added).

32 Ibid s 100B(6) (as added: see note 29 supra). In the case of executive arrangements see the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11.

33 Local Government Act 1972 s 100B(7) (as added: see note 29 supra). In the case of executive arrangements see the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 11(7).

34 A copy of the minutes will suffice: see the Local Government Act 1972 s 100C(1) (s 100C added by the Local Government (Access to Information) Act 1985 s 1(1)).

35 Local Government Act 1972 s 100C(1) (as added: see note 34 supra). In the case of executive arrangements see the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272, reg 22.

36 Local Government Act 1972 s 100C(2) (as added: see note 34 supra).

37 Ibid s 100C(1) (as added: see note 34 supra).

38 Ibid s 100D(2) (as added (see note 31 supra); and amended by the Local Government Act 2000 ss 97(2), 107, Sch 6).

39 A reasonable fee may be charged for inspection of background papers: Local Government Act 1972 s 100H(1)(a) (s 100H added by the Local Government (Access to Information) Act 1985 s 1(1)).

40 Local Government Act 1972 s 100H(1)(b) (as added: see note 39 supra). A person inspecting a document may photocopy it for a reasonable fee: s 100H(2), (3) (as so added).

41 Ibid s 100H(4) (as added: see note 39 supra). The fine must not exceed level 1 on the standard scale: s 100H(4) (as so added). 'Standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this volume states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Powers of Criminal Courts (Sentencing) Act 2000 s 128; and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.

42 Local Government Act 1972 s 100H(5) (as added: see note 39 supra).

UPDATE

38-43 Local authorities ... Government departments, corporations and unincorporated bodies subject to investigation

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

39 Meetings of principal councils

TEXT AND NOTES--Comparable provision to that contained in SI 2000/3272 is made in relation to Wales: see Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, SI 2001/2290 (amended by SI 2002/1385, SI 2007/951).

See also Local Government Act 1972 s 100EA (added by Local Government and Public Involvement in Health Act 2007 s 237(1)) (inspection of records relating to functions exercisable by members).

NOTE 1--1972 Act s 100F amended: SI 2007/969.

TEXT AND NOTE 7--Reference to Service Authority for the National Crime Squad omitted: Local Government Act 1972 s 100J(1) (amended by Criminal Justice and Police Act 2001 Sch 6 para 26(a), Sch 7 Pt 5(1)).

TEXT AND NOTE 9--Reference to combined fire authorities is now to a fire and rescue authority in Wales constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 applies: 1972 Act s 100J(1) (amended by 2004 Act Sch 1 para 39).

1972 Act s 100J further amended: Local Government and Public Involvement in Health Act 2007 Sch 13 para 8; Housing and Regeneration Act 2008 Sch 8 para 15; Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 18.

TEXT AND NOTE 11--1988 Act s 1(1) amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 107.

TEXT AND NOTES 27, 30--References to three clear days are now to five clear days: 1972 Act ss 100A(6), 100B(3), (4) (amended by SI 2002/715).

TEXT AND NOTE 30--Reference to three clear days is now to five clear days: 1972 Act s 100A(6) (amended by SI 2002/715).

TEXT AND NOTE 41--1972 Act s 100H(4) amended: Local Government and Public Involvement in Health Act 2007 s 237(2).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/3. NON-JUDICIAL REDRESS IN RESPECT OF ADMINISTRATIVE ACTION/(1) POLITICAL AND ADMINISTRATIVE SAFEGUARDS/40. Meetings of other public authorities.

40. Meetings of other public authorities.

The following requirements apply to certain local authorities (not being local authorities subject to the requirements as to publicity of meetings set out in the Local Government Act 1972¹) and other bodies exercising public functions². Any meeting of such a body must be open to the public³. Such a body may, however, resolve to exclude the public from the whole or part of a meeting whenever publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or of the proceedings⁴.

Where a meeting is required to be open to the public during the proceedings or any part of them, public notice of time and place must be given⁵, and a copy of the agenda must be supplied on request and on payment of postage for the benefit of any newspaper⁶. While the meeting is open to the public, the body has no power to exclude members of the public, and duly accredited representatives of newspapers⁷ must be afforded reasonable facilities for taking their report and, unless the meeting is held in premises not belonging to the body or not on the telephone, for telephoning the report at their own expense⁸. Any body subject to these requirements is entitled to exclude people in order to suppress or prevent disorderly conduct or other misbehaviour at a meeting⁹.

Any body established by or under any Act may be added to the list of public bodies subject to these requirements, and any body so added may be removed, in each case by order of the appropriate minister¹⁰ made by statutory instrument¹¹.

1 See the Local Government Act 1972 Pt VA (ss 100A-100K) (as added and amended); the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, SI 2000/3272; and para 39 ante.

2 I.e. the bodies to which the Public Bodies (Admission to Meetings) Act 1960 applies. These are set out in s 2, Schedule (amended by the Local Government Act 1972 s 272(1), Sch 30; the Community Land Act 1975 s 8(2), Sch 3 para 9(3); the Water Act 1983 s 11(3), Sch 5 Pt I; the Local Government (Access to Information) Act 1985 s 3, Sch 2 para 4, Sch 3; the Water Act 1989 s 190, Sch 25 para 28; the Water Consolidation (Consequential Provisions) Act 1991 s 2, Sch 1 para 10; the Health Authorities Act 1995 s 2(1), Sch 1 para 91; the Government of Wales Act 1998 ss 128, 152, Sch 14 para 13, Sch 18 Pt V; the Health Act 1999 ss 19, 65, Sch 2 para 16, Sch 4 para 1; the Care Standards Act 2000 ss 6, 54, 66, Sch 1 para 23; the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 3, Sch 2 para 1; and the Public Bodies (Admission to Meetings) (National Health Service Trusts) Order 1997, SI 1997/2763, art 2(2)). The bodies are:

- (1) parish or community councils, the Council of the Isles of Scilly, and joint boards or joint committees which discharge functions of any of those bodies or of any of those bodies and of a principal council within the meaning of the Local Government Act 1972 or a body falling within s 100J(1)(a), (b) or (c) (as added and amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 661);
- (2) the parish meetings of parishes (see LOCAL GOVERNMENT vol 69 (2009) PARA 635 et seq);
- (3) the Welsh Development Agency;
- (4) the Commission for Health Improvement;

- (5) the Care Council for Wales (see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) para 1003);
- (6) the General Social Care Council (see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) para 1003);
- (7) the National Care Standards Commission;
- (8) health authorities, except as regards the exercise of functions under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, or any regulations amending or replacing those regulations (see HEALTH SERVICES vol 54 (2008) PARA 620 et seq);
- (9) if the order establishing a special health authority so requires, the special health authority (see eg the Special Health Authorities (Establishment and Constitution Orders) Amendment Order 1998, SI 1998/1577);
- (10) Primary Care Trusts (see HEALTH SERVICES vol 54 (2008) PARA 111);
- (11) bodies not mentioned above but having, within the meaning of the Public Works Loans Act 1875, power to levy a rate (other than bodies to which the Local Government Act 1972 ss 100A-100D (as added; s 100D as added and amended) apply, whether or not by virtue of s 100E or s 100J (both as added and amended) (see para 39 ante);
- (12) regional and local flood defence committees (see WATER AND WATERWAYS vol 101 (2009) PARAS 559 et seq, 563 et seq);
- (13) advisory committees established and maintained under the Environment Act 1995 s 12 or s 13 (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARAS 83-84);
- (14) customer service committees maintained under the Water Industry Act 1991 s 28; and
- (15) National Health Service trusts established under the National Health Service and Community Care Act 1990 s 5(1) (as amended) (see HEALTH SERVICES vol 54 (2008) PARA 155).

See also the Local Government Act 1972 s 100 (amended by the Local Government (Access to Information) Act 1985 s 3, Sch 2 para 6, Sch 3) which applies the Public Bodies (Admission to Meetings) Act 1960 to certain committees (see LOCAL GOVERNMENT vol 69 (2009) PARA 641). When a body to which the Public Bodies (Admission to Meetings) Act 1960 applies resolves itself into committee, the proceedings in committee are for the purposes of the Act treated as forming part of the proceedings of the body at the meeting: s 1(6). The Act also applies to a committee of a body whose members consist of or include all members of the body: s 2(1). As to the addition of other bodies to the list to which these provisions apply see the text and notes 10-11 infra.

3 Ibid s 1(1) (amended by the Local Government (Access to Information) Act 1985 s 3, Sch 2 para 4, Sch 3). At common law neither the public nor representatives of the press have a right to attend meetings of local councils: *Tenby Corpn v Mason* [1908] 1 Ch 457, CA. See also *R v Brent Health Authority, ex p Francis* [1985] QB 869, [1985] 1 All ER 74.

4 Public Bodies (Admission to Meetings) Act 1960 s 1(2). See *R v Liverpool City Council, ex p Liverpool Taxi Fleet Operators' Association* [1975] 1 All ER 379, [1975] 1 WLR 701, DC. A body may treat the need to receive or consider recommendations or advice from sources other than members, committees or sub-committees as a special reason why publicity would be prejudicial to the public interest, without regard to the subject or purport of the recommendations or advice: see the Public Bodies (Admission to Meetings) Act 1960 s 1(3); and *Peachey Property Corpn Ltd v Paddington Borough Council* (1964) 108 Sol Jo 499, CA. However, this does not restrict the generality of the Public Bodies (Admission to Meetings) Act 1960 s 1(2) in relation to other cases (including in particular cases where the report of a committee or sub-committee of the body is of a confidential nature): s 1(3).

5 Ibid s 1(4)(a). Notice is given by posting it at the body's offices (or, if it has no offices, in some central and conspicuous place in the area with which it is concerned) at least three clear days before the meeting or, if it is convened at shorter notice, then at the time it is convened: s 1(4)(a).

6 Ibid s 1(4)(b). The copy of the agenda may exclude any item during which the meeting is likely not to be open to the public: s 1(4)(b). Any further statements or particulars needed to indicate the nature of the items included (or copies of reports or other documents supplied to members) are also to be supplied: s 1(4)(b). An auditor's report must not be excluded from the matter supplied for the benefit of any newspaper: see the Audit Commission Act 1998 s 10(5)(a). The publication of any defamatory matter in the agenda or further statements

or particulars is privileged unless proved to be made with malice; this also applies to agenda supplied to a member of the public attending the meeting: Public Bodies (Admission to Meetings) Act 1960 s 1(5). 'Newspaper' includes a news agency which systematically carries on the business of selling and supplying reports or information to newspapers, and any organisation systematically engaged in collecting news for sound or television broadcasts or for programme services (within the meaning of the Broadcasting Act 1990 (see TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) para 328)) other than sound or television broadcasting services, but nothing in these provisions requires a body to permit the taking of photographs or the use of any means to enable persons not present to see or hear any proceedings (whether at the time or later) or the making of any oral report on any proceedings as they take place: Public Bodies (Admission to Meetings) Act 1960 s 1(7) (amended by the Broadcasting Act 1990 s 203(1), Sch 20 para 5).

7 See note 6 supra.

8 Public Bodies (Admission to Meetings) Act 1960 s 1(4)(c).

9 Ibid s 1(8). See *R v Brent Health Authority, ex p Francis* [1985] QB 869, [1985] 1 All ER 74; *R v Brent London Borough Council, ex p Assegai* (1987) Times, 18 June (natural justice requires that a person be permitted to make representations before he is excluded from a meeting on the ground of disruptive behaviour).

10 The appropriate minister is, in the case of any body, the Minister of the Crown in charge of the government department concerned or primarily concerned with the matters dealt with by that body: Public Bodies (Admission to Meetings) Act 1960 s 2(3). Functions of the Minister of the Crown, so far as exercisable in relation to Wales, have been transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1: see CONSTITUTIONAL LAW AND HUMAN RIGHTS. For orders made under the Public Bodies (Admission to Meetings) Act 1960 s 2(3) see eg the Public Bodies (Admission to Meetings) (National Health Service Trusts) Order 1997, SI 1997/2763.

11 Public Bodies (Admission to Meetings) Act 1960 s 2(3). Any statutory instrument under this provision has no effect unless approved by a resolution of each House of Parliament: s 2(3).

UPDATE

38-43 Local authorities ... Government departments, corporations and unincorporated bodies subject to investigation

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

40 Meetings of other public authorities

NOTE 2--Heads (3), (4), (7), (8) omitted; now head (10) primary care trusts as regards the exercise of functions under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664 (see HEALTH SERVICES vol 54 (2008) PARA 619 et seq) or any regulations amending or replacing those regulations are excepted; and additional heads (16) the Council for Healthcare Regulatory Excellence; (17) strategic health authorities; (18) local health boards; (19) the Wales Centre for Health; and (20) the Care Quality Commission: Public Bodies (Admission to Meetings) Act 1960 Schedule (amended by National Health Service Reform and Health Care Professions Act 2002 Sch 5 para 1, Sch 7 para 21; Health and Social Care (Community Health and Standards) Act 2003 Sch 9 para 2, Sch 14 Pt 2; Health (Wales) Act 2003 Sch 3 para 1; Health and Social Care Act 2008 Sch 5 para 55, Sch 10 para 3, Sch 15 Pt 1; SI 2002/2469; SI 2005/3226; and SI 2007/961).

In head (15) reference to National Health Service and Community Care Act 1990 s 5(1) is now to National Health Service Act 2006 s 25 or National Health Service (Wales) Act 2006 s 18: 1960 Act Schedule (amended by National Health Service (Consequential Provisions) Act 2006 Sch 1 para 27).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/3. NON-JUDICIAL REDRESS IN RESPECT OF ADMINISTRATIVE ACTION/(2) THE PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION/41. Investigation of complaints: the Parliamentary Commissioner.

(2) THE PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION

41. Investigation of complaints: the Parliamentary Commissioner.

The Parliamentary Commissioner for Administration¹ may investigate, on reference being duly made to him, any actions² taken by or on behalf of specified government departments, corporations, unincorporated bodies³ being actions taken in the exercise of administrative functions⁴ of that department or authority, other than those actions he is expressly precluded from investigating⁵. An investigation may take place in any case where (1) a written complaint has been made to a member of the House of Commons by a member of the public who claims to have sustained injustice in consequence of maladministration⁶ in connection with administrative action; and (2) the complaint has been referred to the Commissioner, with the consent of the person who made it, by a member of the House of Commons with a request to conduct an investigation thereon⁷. The Parliamentary Commissioner must not investigate any action in respect of which the person aggrieved⁸ either has or had a right of appeal, reference or review to or before a tribunal constituted by or under any enactment or by virtue of the royal prerogative⁹ or has or had a remedy by way of proceedings in any court of law¹⁰, unless he is satisfied that in the particular circumstances it is not reasonable to expect the aggrieved person to resort or have resorted to that right or remedy¹¹. He is not authorised or required to question the merits of a discretionary decision taken without maladministration by a government department or other authority¹². Subject to the foregoing restrictions, he acts in accordance with his own discretion in determining whether to initiate or discontinue an investigation, and any question whether a complaint is duly made under the Parliamentary Commissioner Act 1967 is determined by the Commissioner¹³.

The Parliamentary Commissioner is appointed by Her Majesty by letters patent¹⁴. He holds office during good behaviour¹⁵. He may be removed from office by Her Majesty in consequence of an address from both Houses of Parliament¹⁶ or if Her Majesty is satisfied that the person appointed to be Commissioner is incapable for medical reasons of performing the duties of his office and in consequence of requesting to be relieved of it¹⁷.

The Parliamentary Commissioner may appoint such officers as he may determine¹⁸, and any of his functions may be performed by any such officer or by any officer of the Welsh Administration Ombudsman or of the Health Service Commissioner for England, Wales or Scotland authorised for that purpose¹⁹. The expenses incurred by the Commissioner are, to such amount as may be sanctioned by the Treasury, defrayed out of moneys provided by Parliament²⁰.

Information obtained by the Parliamentary Commissioner or his officers in the course of or for the purposes of an investigation²¹ must not be disclosed except: (a) for the purposes of the investigation and any report thereon²²; (b) for the purposes of any proceedings for an offence under the official secrets law²³ alleged to have been committed in respect of information obtained by the Parliamentary Commissioner or any of his officers under the Parliamentary Commissioner Act 1967, or for the purposes of any proceedings²⁴ for an offence of perjury allegedly committed in the course of an investigation²⁵; or (c) for the purpose of any proceedings for obstruction and contempt²⁶ in relation to the functions of the Parliamentary Commissioner and his officers²⁷. With the same exceptions, the Parliamentary Commissioner

and his officers may not be called to give evidence in any proceedings of matters coming to his or their knowledge in the course of an investigation²⁸.

Where the office of Parliamentary Commissioner becomes vacant, Her Majesty may, pending the appointment of a new Commissioner, appoint a person to act as the Commissioner at any time during the period of 12 months beginning with the date on which the vacancy arose²⁹. Such a person will hold office during Her Majesty's pleasure and, subject to that, will hold office until the appointment of a new Parliamentary Commissioner or the expiry of the period of 12 months beginning with the date on which the vacancy arose, whichever occurs first³⁰. Such a person will, while he holds office, be treated for all purposes as the Parliamentary Commissioner³¹.

1 See the Parliamentary Commissioner Act 1967 s 1(1), (2) (as amended); and the text and note 14 infra. The Parliamentary Commissioner Act 1967 was brought into operation on 1 April 1967: see the Parliamentary Commissioner Act 1967 (Commencement) Order 1967, SI 1967/485; and see the *First Report of the Parliamentary Commissioner for Administration* (HC Paper (1967-68) no 6). The Parliamentary Commissioner's activities are scrutinised by the House of Commons Select Committee on Public Administration (established in 1997 by HC Standing Orders (1997) no 146, replacing the House of Commons Select Committee on the Parliamentary Commissioner for Administration): see PARLIAMENT vol 78 (2010) PARA 989.

The introduction of the Citizen's Charter has led to the establishment of internal complaints procedures by public bodies to hear complaints about the standard of service provided by the body. The Parliamentary Commissioner has expressed concern that the appointment of lay adjudicators to perform an independent decision making function in the internal complaints procedure might deter a complainant from proceeding to complain to the Commissioner following the decision under the internal complaints procedure: see the *Second Report on the Implications of the Citizen's Charter for the Work of the Parliamentary Commissioner for Administration* (HC Paper (1991-92) no 158) p vi-vii. A person may complain to the Parliamentary Commissioner irrespective of whether or not he has brought a complaint under an internal complaints procedure and the decisions of adjudicators appointed to decide such internal complaints may themselves be the subject of a complaint to the Parliamentary Commissioner. As to the Citizen's Charter see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 431.

2 See the Parliamentary Commissioner Act 1967 s 5(1); and the text and note 7 infra. 'Action' includes failure to act: s 12(1). The Parliamentary Commissioner has taken the view that industrial action is not administrative action for these purposes. See *Annual Report for 1980* (HC Paper (1980) no 148) para 5. See also *Booth v Dillon* [1976] VR 291; *Booth v Dillon (No 3)* [1977] VR 143; *Glenister v Dillon (No 2)* [1977] VR 151; *Re British Columbia Development Corp'n and Friedman* (1984) 19 DLR (4th) 129, Can SC.

3 See the Parliamentary Commissioner Act 1967 s 4(1) (substituted by the Parliamentary and Health Service Commissioners Act 1987 s 1(1)). The departments etc subject to investigation are set out in the Parliamentary Commissioner Act 1967 s 4(1) (as so substituted), Sch 2 (as substituted and amended): see para 43 post.

4 Administrative functions exercisable by any person appointed as a member of staff of a relevant tribunal by a government department or authority to which the Parliamentary Commissioner Act 1967 applies, or with the consent (whether as to remuneration and other terms and conditions of service or otherwise) of such a department or authority, are taken to be administrative functions of that department or authority: s 5(7) (added by the Parliamentary Commissioner Act 1994 s 1(1)). For these purposes, 'relevant tribunal' means a tribunal listed in Parliamentary Commissioner Act 1967 Sch 4 (as added and amended): s 5(8). Schedule 4 may be amended by Order in Council, and any statutory instrument made is subject to annulment in pursuance of a resolution of either House of Parliament: s 5(9) (added by the Parliamentary Commissioner Act 1994 s 1(1)). As from a day to be appointed the Parliamentary Commissioner Act 1967 s 5(8) is amended by the Social Security Act 1998 s 86(1), Sch 7 para 3(1) so that 'relevant tribunal' means a tribunal constituted under the Social Security Act 1998 Pt I Ch I (ss 1-7) (as amended) (see SOCIAL SECURITY AND PENSIONS). At the date at which this volume states the law no such day had been appointed.

Administrative functions exercisable by any person appointed by the Lord Chancellor as a member of the administrative staff of any court or tribunal are taken to be administrative functions of the Lord Chancellor's Department or, in Northern Ireland, of the Northern Ireland Court Service: Parliamentary Commissioner Act 1967 s 5(6) (added by the Courts and Legal Services Act 1990 s 110(1)).

Administrative functions exercisable by an administrator of the Criminal Injuries Compensation Scheme (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) para 2033 et seq) are taken to be administrative functions to which the Parliamentary Commissioner Act 1967 applies: s 11B (added by the Criminal Injuries Compensation Act 1995 s 10(1)).

Administrative functions exercisable by any person appointed by the Secretary of State under the School Standards and Framework Act 1998 s 25, Sch 5 para 4 (being adjudicators appointed under s 25) are to be taken to be administrative functions of the Department for Education and Employment: Sch 5 para 9.

5 See the Parliamentary Commissioner Act 1967 s 5(3), Sch 3 (as amended); and para 42 post.

6 'The Act does not define maladministration. I have to identify instances of it in the course of my casework': see the *First Report of the Parliamentary Commissioner for Administration* (HC Paper (1967-68) no 6) para 31. See also *R v Local Comr for Administration for the North and East Area of England, ex p Bradford Metropolitan City Council* [1979] QB 287, [1979] 2 All ER 881, CA (maladministration has an open-ended meaning, covering 'bias, neglect, inattention, delay, incompetence, ineptitude, perversity, turpitude, arbitrariness and so on' (per Lord Denning MR at 311-312 and 898), 'faulty administration' or 'inefficient or improper management of affairs' (per Eveleigh LJ at 314 and 900)). The Parliamentary Commissioner has included under the definition of maladministration 'unwillingness to treat the complainant as a person with rights; refusal to answer reasonable questions; knowingly giving advice which is misleading or inadequate; offering no redress or manifestly disproportionate redress; and partiality': *Annual Report of the Parliamentary Commissioner for Administration for 1993* (HC Paper (1993-94) no 290) para 7. Maladministration in respect of administrative action covers not merely injury redressible in a court of law but also the sense of outrage aroused by unfair or incompetent administration, even where the complainant has suffered no actual loss: *R v Parliamentary Comr for Administration, ex p Balchin* [1998] 1 PLR 1, [1997] JPL 917. The Parliamentary Commissioner's touchstone remains that a person who has suffered an injustice due to maladministration should so far as possible be restored to the position he or she would have been in had the maladministration not occurred: *Annual Report of the Parliamentary Commissioner for Administration* (HC Paper (1997-98) no 845). Maladministration by a local authority does not generally give rise to a right to damages in civil law: *R v Knowsley Metropolitan Borough Council, ex p Maguire* [1992] NLJR 1375. See also *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633, [1995] 3 All ER 353, HL. However, as to the availability of damages for the negligent performance of a statutory duty see *Phelps v Hillingdon London Borough Council* [2000] 4 All ER 504, [2000] 3 WLR 776, HL; and TORT vol 45(2) (Reissue) para 395 et seq.

7 Parliamentary Commissioner Act 1967 s 5(1). The publication of any matter by a member of the House of Commons in communicating with the Commissioner or his officers is for the purposes of the law of defamation absolutely privileged: s 10(5)(b). The requirement that complaints to the Parliamentary Commissioner be referred through a member of Parliament has been criticised by the review of public sector ombudsmen carried out within the Cabinet Office: see 612 HL Official Report (5th series), 14 April 2000, written answers col 70 (this review also recommends that the Parliamentary Commissioner, the Health Service Commissioner and the Local Government Commissioners be merged into a single collegiate structure and that the complaints procedure be simplified).

8 'Person aggrieved' means the person who claims or is alleged to have sustained such injustice as is mentioned in the Parliamentary Commissioner Act 1967 s 5(1)(a) (see head (1) in the text): s 12(1).

9 Ibid s 5(2)(a). For a summary of reasons why complaints were unsuitable for investigation see the *Annual Report of the Parliamentary Commissioner for Administration* (HC Paper (1998-99) no 572) para 2.8, fig 4, where 13% of complaints were rejected as the complainant had the right of appeal to a tribunal.

10 Parliamentary Commissioner Act 1967 s 5(2)(b). See *R v Comr for Local Administration, ex p Croydon London Borough Council* [1989] 1 All ER 1033 at 1044, DC, per Woolf LJ.

11 Parliamentary Commissioner Act 1967 s 5(2) proviso.

12 Ibid s 12(3). References to authorities to which the Parliamentary Commissioner Act 1967 applies include references to corporations and unincorporated bodies to which the Act applies: s 4(1) (substituted by the Parliamentary and Health Service Commissioners Act 1987 s 1(1)). See *R v Local Comr for Administration for the South, the West, the West Midlands, Leicestershire, Lincolnshire and Cambridgeshire, ex p Eastleigh Borough Council* [1988] QB 855, [1988] 3 All ER 151, CA; *R v Local Comr for Administration for the North and East Area of England, ex p Bradford Metropolitan City Council* [1979] QB 287 at 316, [1979] 2 All ER 881 at 901, CA, per Eveleigh LJ; *R v Comr for Local Administration, ex p Croydon London Borough Council* [1989] 1 All ER 1033 at 1043, DC, per Woolf LJ. He may, however, question the manner in which the decision is taken: see *R v Local Comr for Administration for the North and East Area of England, ex p Bradford Metropolitan City Council* supra; *R v Comr for Local Administration, ex p Croydon London Borough Council* supra. See further the *Second Report from the Select Committee on the Parliamentary Commissioner for Administration* (HC Paper (1967-68) no 350) paras 9-17; *First Report of the Parliamentary Commissioner for Administration* (HC Paper (1968-69) no 9); *Second Report from the Select Committee on the Parliamentary Commissioner for Administration* (HC Paper (1970-71) no 513) paras 18-20; *First Report of the Parliamentary Commissioner for Administration* (HC Paper (1971-72) no 15).

13 Parliamentary Commissioner Act 1967 s 5(5). See *Re Fletcher's Application* [1970] 2 All ER 527n, CA (mandamus (now a mandatory order: see para 117 note 3 post) refused because the power under the

Parliamentary Commissioner Act 1967 s 5(1) is discretionary). The exercise of this discretion, however, is subject to judicial review: see *R v Local Comr for Administration for the North and East Area of England, ex p Bradford Metropolitan City Council* [1979] QB 287, [1979] 2 All ER 881, CA; *R v Local Comr for Administration for the South, the West, the West Midlands, Leicestershire, Lincolnshire and Cambridgeshire, ex p Eastleigh Borough Council* [1988] QB 855, [1988] 3 All ER 151, CA; *R v Comr for Local Administration, ex p Croydon London Borough Council* [1989] 1 All ER 1033, DC. However, because of the width of this discretion it would be difficult to mount an effective challenge on the grounds of unreasonableness and the courts would not readily interfere: *R v Parliamentary Comr for Administration, ex p Lithgow* (26 January 1990, unreported) per Macpherson J; *R v Parliamentary Comr, ex p Dyer* [1994] 1 All ER 375, [1994] 1 WLR 621, DC. The court will, however, intervene where the Parliamentary Commissioner has failed to take account of a relevant factor (*R v Parliamentary Comr for Administration, ex p Balchin* [1998] 1 PLR 1, [1997] JPL 917) or where he has made a crucial omission in his investigation and where his reasoning failed to make explicit the means by which he finds that injustice has or has not occurred (*R v Parliamentary Comr for Administration, ex p Balchin* (1999) 2 LGLR 87). The availability of judicial review of the decisions of the Parliamentary Commissioner for Administration should be contrasted with the position of the Parliamentary Commissioner for Standards, who, as his role is concerned with the propriety of the workings and the activities of those engaged within Parliament and who is supervised by the Committee of Standards and Privileges of the House of Commons, is not subject to judicial review in the courts (see PARLIAMENT vol 78 (2010) PARA 1073): see *R v Parliamentary Comr for Standards, ex p Al Fayed* [1998] 1 All ER 93, [1998] 1 WLR 669, CA.

14 Parliamentary Commissioner Act 1967 s 1(1), (2). By virtue of his office he is a member of the Council on Tribunals: Tribunals and Inquiries Act 1992 s 2(3).

15 Parliamentary Commissioner Act 1967 s 1(2) (amended by the Parliamentary and Health Service Commissioners Act 1987 s 2(1)). The Parliamentary Commissioner Act 1967 s 1(2) (as amended) is expressed to be subject to s 1(3), (3A) (as added). The Parliamentary Commissioner may resign from the office and in any case retires on completing the year of service in which he attains the age of 65: s 1(3). Provision is made for the payment of a salary (see s 2 (amended by the Parliamentary and other Pensions and Salaries Act 1976 ss 6(2), (4), 9(2), Schedule)) and a pension (see the Parliamentary Commissioner Act 1967 s 2(3), Sch 1 (substituted by the Judicial Pensions and Retirement Act 1993 s 25, Sch 4 para 2; and amended by the Pension Schemes Act 1993 s 190, Sch 8 para 1)). See also the Parliamentary Commissioner's Pension Regulations 1967, SI 1967/846 (amended by SI 1972/494); the Pensions (Miscellaneous Offices) (Preservation of Benefits) Order 1977, SI 1977/1653 (amended by SI 1986/940; and SI 1989/1030); the Pensions (Miscellaneous Offices) (Requisite Benefits) Order 1978, SI 1978/552 (amended by SI 1989/829); and the Pensions Increase (Parliamentary Commissioner) Regulations 1979, SI 1979/622.

16 Parliamentary Commissioner Act 1967 s 1(3).

17 Ibid s 1(3A) (added by the Parliamentary and Health Service Commissioners Act 1987 s 2(1)).

18 Parliamentary Commissioner Act 1967 s 3(1). The approval of the Treasury is required as to numbers and conditions of service: s 3(1).

19 Ibid s 3(2) (amended by the Government of Wales Act 1998 s 125, Sch 12 paras 4, 5). The word 'officer' includes employee: Parliamentary Commissioner Act 1967 s 12(1).

20 Ibid s 3(3).

21 This includes information received from the Information Commissioner: *ibid* s 11(5) (added by the Freedom of Information Act 2000 s 76(2), Sch 7 para 1). Where such information is obtained from the Information Commissioner by virtue of the Freedom of Information Act 2000 s 76(1) (see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) para 615), it is to be treated as obtained for the purposes of an investigation under the Parliamentary Commissioner Act 1967: s 11(5) (as so added). As to the Information Commissioner see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) para 518 et seq.

22 Ibid s 11(2)(a).

23 *Ie* under the Official Secrets Acts 1911 to 1989: see further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 478 et seq.

24 Or for the purposes of an inquiry with a view to the taking of such proceedings: see the Parliamentary Commissioner Act 1967 s 11(2)(b).

25 Ibid s 11(2)(b) (amended by the Official Secrets Act 1989 s 16(3), Sch 1 para 1).

26 *Ie* under the Parliamentary Commissioner Act 1967 s 9: see para 44 post.

27 Ibid s 11(2)(c). Section 11(2) does not apply to the disclosure of information by the Parliamentary Commissioner, the Welsh Administration Ombudsman, a local commissioner or the Health Service Commissioner for England, Wales or Scotland or their officers in the course of consultations held in accordance with the Local Government Act 1974 s 33 (as amended) or the Parliamentary Commissioner Act 1967 s 11A (as added) (see para 44 post): Local Government Act 1974 s 33(5) (amended by the Government of Wales Act 1998 ss 125, 152, Sch 12 para 17(4)(b), Sch 18 Pt I); Parliamentary Commissioner Act 1967 s 11A(3) (added by the Parliamentary and Health Service Commissioners Act 1987 s 4(2)).

The prohibition on disclosure of information in the Parliamentary Commissioner Act 1967 s 11(2) (as amended) does not apply to the disclosure of information to the Information Commissioner if the information appears to the Parliamentary Commissioner to relate to: (1) a matter in respect of which the Information Commissioner could exercise any power conferred by the Data Protection Act 1998 Pt V (ss 40-50) (enforcement), the Freedom of Information Act 2000 s 48 (practice recommendations), or Pt IV (ss 50-56) (enforcement); or (2) the commission of an offence under any provision of the Data Protection Act 1998 other than s 50, Sch 9 para 12 (obstruction of execution of warrant) or the Freedom of Information Act 2000 s 77 (offence of altering etc records with intent to prevent disclosure): Parliamentary Commissioner Act 1967 s 11AA (added by the Freedom of Information Act 2000 s 76(2), Sch 7 para 2). See further CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) para 522.

Where the Parliamentary Commissioner also holds office as the Welsh Administration Ombudsman or a Health Service Commissioner and a person initiates a complaint to him in his capacity as Welsh Administration Ombudsman or a Health Service Commissioner which relates partly to a matter with respect to which that person has previously initiated a complaint under the Parliamentary Commissioner Act 1967, or subsequently initiates such a complaint, information obtained by the Commissioner or his officers in the course of or for the purposes of investigating the complaint under the Act may be disclosed for the purpose of his carrying out his functions in relation to the other complaint: s 11(2A) (added by the Parliamentary and Health Service Commissioners Act 1987 s 4(1); and amended by the Government of Wales Act 1998 s 125, Sch 12 paras 4, 7).

28 Parliamentary Commissioner Act 1967 s 11(2).

29 Ibid s 3A(1) (s 3A added by the Parliamentary and Health Service Commissioners Act 1987 s 6(1)).

30 Parliamentary Commissioner Act 1967 s 3A(2)(a) (as added: see note 29 supra).

31 Ibid s 3A(3) (as added: see note 29 supra). The terms and conditions of his appointment will be such as the Treasury may determine: s 3A(2)(b) (as so added). Any salary, pension or other benefit payable is to be charged on and issued out of the Consolidated Fund: s 3A(4) (as so added). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

UPDATE

38-43 Local authorities ... Government departments, corporations and unincorporated bodies subject to investigation

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

41 Investigation of complaints: the Parliamentary Commissioner

NOTE 4--Parliamentary Commissioner Act 1967 Sch 4 substituted by SI 2007/3470; and amended by SI 2008/2833, SI 2008/3115, SI 2009/1836. Parliamentary Commissioner Act 1967 s 11B amended: SI 2008/2833. Reference to Department for Education and Employment is now to Department of Education and Skills: School Standards and Framework Act 1998 Sch 5 para 9 (amended by SI 2002/1397).

Reference to Lord Chancellor's Department is now to Ministry of Justice: 1967 Act s 5(6) (amended by Constitutional Reform Act 2005 Sch 17 para 6(2); and SI 2007/2128).

TEXT AND NOTES 6, 7--If a written complaint is duly made to a member of the House of Commons by a member of the public who claims that a person has failed to perform a relevant duty owed by him to the member of the public, and the complaint is referred

to the Parliamentary Commissioner for Administration, with the consent of the person who made it, by a member of the House of Commons with a request to conduct an investigation into it, the Parliamentary Commissioner may investigate the complaint: 1967 Act s 5(1A), (1C) (s 5(1A)-(1C) added by Domestic Violence, Crime and Victims Act 2004 Sch 7 para 2(2)). A relevant duty is a duty imposed by any of (1) a code of practice issued under the 2004 Act s 32 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) PARA 2172); (2) ss 35-44 (see SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARAS 340-342, 633): 1967 Act s 5(1B).

The Parliamentary Commissioner must not conduct an investigation pursuant to such a complaint in respect of action taken by or with the authority of the Secretary of State for the purposes of protecting the security of the state, including action so taken with respect to passports, or any other specified action or matter described in any of Sch 3 paras 1-4 and 6A-11 (see PARA 42): s 5(4A) (s 5(4A)-(4C) added by 2004 Act Sch 7 para 2(4)). This provision may be amended by Order in Council: see 1967 Act s 5(4B), (4C).

NOTE 6--Findings of maladministration by a Parliamentary Ombudsman can be rejected by a government body if it can be shown that it is rational for it to do so: *R (on the application of Bradley) v Secretary of State for Work and Pensions*[2008] EWCA Civ 36, [2008] 3 All ER 1116. The government must give a reason for rejecting such findings: *R (on the application of Equitable Members Action Group) v HM Treasury*[2009] EWHC 2495 (Admin), [2009] All ER (D) 163 (Oct), DC.

NOTE 8--'Person aggrieved', in relation to a complaint under the 1967 Act s 5(1), means the person who claims or is alleged to have sustained such injustice as is mentioned in s 5(1)(a): s 12(1)(a) (definition substituted by 2004 Act Sch 7 para 6).

TEXT AND NOTES 14-17--1967 Act s 1(2) amended, s 1(2A)-(2C), (3B) added, s 1(3) substituted: SI 2006/1031.

NOTE 14--1992 Act s 2 repealed: Tribunals, Courts and Enforcement Act 2007 s 45(2), Sch 23 Pt 1.

TEXT AND NOTES 19-21--1967 Act s 3A(1A), (1B) added, s 3A(2) amended, s 3A(3) substituted: SI 2006/1031.

TEXT AND NOTE 19--1967 Act s 3(2) further amended: Public Services Ombudsman (Wales) Act 2005 Sch 6 para 2. For the purposes of conducting a joint investigation under the 1967 Act s 11ZAA (see PARA 44), any function of the Commissioner under the 1967 Act may be performed by any person discharging or assisting in the discharge of a function of a local commissioner, but only if the person is authorised for the purpose by the Commissioner: 1967 Act s 3(2A) (added by SI 2007/1889; and amended by Local Government and Public Involvement in Health Act 2007 Sch 12 para 13(2)).

NOTE 20--The Parliamentary Commissioner may appoint and pay a mediator or other appropriate person to assist him in the conduct of an investigation under the 1967 Act: s 3(1A) (added by SI 2007/1889).

TEXT AND NOTE 27--Also head (d) read for the purposes of a matter which is being investigated by the Health Service Commissioner for England or a Local Commissioner or both: 1967 Act s 11(2)(aa) (added by SI 2007/1889; and amended by Local Government and Public Involvement in Health Act 2007 s 182, Sch 12 Pt 2 para 13(1), (3)).

NOTE 27--1974 Act s 33(5) further amended: Public Services Ombudsman (Wales) Act 2005 Sch 6 para 15(4).

For 'holds office as Welsh Administration Ombudsman or a Health Service Commissioner' read 'holds office as the Health Service Commissioner for England'; and for 'in his capacity ... Health Service Commissioner' read 'in his capacity as the Health

Service Commissioner for England': 1967 Act s 11(2A) (amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 para 4).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/3. NON-JUDICIAL REDRESS IN RESPECT OF ADMINISTRATIVE ACTION/(2) THE PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION/42. Matters excluded from investigation.

42. Matters excluded from investigation.

The matters which are expressly excluded from investigation by the Parliamentary Commissioner for Administration¹ are:

- (1) action taken in matters certified by a Secretary of State or other Minister of the Crown to affect relations or dealings between the government of the United Kingdom² and any other government or any international organisation of states or governments³;
- (2) action taken, in any country or territory outside the United Kingdom, by or on behalf of any officer representing or acting under the authority of Her Majesty in respect of the United Kingdom, or any other officer of the government of the United Kingdom, other than action which is taken by an officer (not being an honorary consular officer) in the exercise of a consular function on behalf of the government of the United Kingdom⁴;
- (3) action taken in connection with the administration of the government of any country or territory outside the United Kingdom which forms part of Her Majesty's dominions or in which Her Majesty has jurisdiction⁵;
- (4) action taken by the Secretary of State in connection with extradition and fugitive offenders⁶;
- (5) action taken by or with the authority of the Secretary of State for the purposes of investigating crime or of protecting the security of the state, including action so taken with respect to passports⁷;
- (6) the commencement or conduct of civil or criminal proceedings before any court of law in the United Kingdom, of proceedings at any place under the statutes relating to the armed forces⁸, or of proceedings before any international court or tribunal⁹;
- (7) action taken by any person appointed by the Lord Chancellor as a member of the administrative staff of any court or tribunal so far as that action is taken at the direction, or on the authority (whether express or implied) of any person acting in a judicial capacity or in his capacity as a member of the tribunal¹⁰;
- (8) action taken by the administrative staff of a relevant tribunal¹¹ so far as that action is taken at the direction, or on the authority (whether express or implied) of any person acting in his capacity as a member of the tribunal¹²;
- (9) action taken by any person appointed as a member of staff in relation to administering appeals under the Criminal Injuries Compensation Act 1995¹³, so far as that action is taken at the direction, or on the authority (whether express or implied), of any person acting in his capacity as an adjudicator appointed under that Act¹⁴ to determine appeals¹⁵;
- (10) any exercise of the prerogative of mercy of the power of a Secretary of State to make a reference in respect of any person to the High Court of Justiciary or the Courts-Martial Appeal Court¹⁶;
- (11) action taken on behalf of the Minister of Health or the Secretary of State by a Health Authority, a Special Health Authority, except the Rampton Hospital

Review Board, the Rampton Hospital Board, the Broadmoor Hospital Board or the Moss Side and Park Lane Hospitals Board, a health board or the Common Services Agency for the Scottish Health Service, by the Dental Practice Board or the Scottish Dental Practice Board, or by the Public Health Laboratory Service Board¹⁷;

(12) action taken in matters relating to contractual or other commercial transactions, whether within the United Kingdom or elsewhere, being transactions of a government department or authority to which the Parliamentary Commissioner Act 1967 applies or certain other authorities or bodies¹⁸ with the exception of certain transactions relating to compulsory acquisition of land¹⁹;

(13) action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to service in any of the armed forces of the Crown²⁰, service in any office or employment under the Crown or under any authority subject to investigation under the Parliamentary Commissioner Act 1967²¹, or service in any office or employment, or under any contract for services, in respect of which power to take action, or to determine or approve the action to be taken, in such matters is vested in Her Majesty, any Minister of the Crown or any authority subject to that Act²²; and

(14) the grant of honours, awards or privileges within the gift of the Crown, including the grant of royal charters²³.

1 Ie by the Parliamentary Commissioner Act 1967 s 5(3), Sch 3 (as amended). Schedule 3 may be amended by Order in Council so as to exclude such actions or matters as may be described by the Order; and any statutory instrument made by virtue of s 5(4) is subject to annulment in pursuance of a resolution of either House of Parliament: s 5(4).

2 For the meaning of 'United Kingdom' see para 14 note 19 ante.

3 Parliamentary Commissioner Act 1967 Sch 3 para 1.

4 Ibid Sch 3 para 2 (amended by the Parliamentary Commissioner Order 1979, SI 1979/915, art 2; and the Parliamentary Commissioner (No 2) Order 1988, SI 1988/1985, art 2).

5 Parliamentary Commissioner Act 1967 Sch 3 para 3.

6 Ibid Sch 3 para 4 (amended by the Extradition Act 1989 s 36(1)). The action referred to in the text is action under the Extradition Act 1870, the Fugitive Offenders Act 1967, or the Extradition Act 1989: see EXTRADITION.

7 Parliamentary Commissioner Act 1967 Sch 3 para 5.

8 Ie proceedings under the Naval Discipline Act 1957, the Army Act 1955 or the Air Force Act 1955: see ARMED FORCES.

9 Parliamentary Commissioner Act 1967 Sch 3 para 6.

10 Ibid Sch 3 para 6A (added by the Courts and Legal Services Act 1990 s 110(2)).

11 For the meaning of 'relevant tribunal' see para 41 note 4 ante; definition applied by the Parliamentary Commissioner Act 1967 Sch 3 para 6B(2) (Sch 3 para 6B added by the Parliamentary Commissioner Act 1994 s 1(2)).

12 Parliamentary Commissioner Act 1967 Sch 3 para 6B(1) (as added: see note 11 supra).

13 Ie persons appointed under the Criminal Injuries Compensation Act 1995 s 5(3)(c): see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) para 2034.

14 Ie appointed under ibid s 5: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(4) (2006 Reissue) para 2034.

15 Parliamentary Commissioner Act 1967 Sch 3 para 6C (added by the Criminal Injuries Compensation Act 1995 s 10(2)).

16 Parliamentary Commissioner Act 1967 Sch 3 para 7 (amended by the Criminal Appeal Act 1995 s 29, Sch 3).

17 Parliamentary Commissioner Act 1967 Sch 3 para 8(1) (amended by the National Health Service Reorganisation Act 1973 ss 57, 58, Sch 4 para 109; the Health Service Commissioners Act 1993 s 20, Sch 2; the Health Authorities 1995 ss 2(1), 5(1), Sch 1 para 93, Sch 3; the Parliamentary Commissioner Order 1981, SI 1981/736, art 2; the Parliamentary Commissioner Order 1986, SI 1986/1168, art 2; the Parliamentary Commissioner Order 1987, SI 1987/661, art 2; and the Health Act 1999 (Supplementary, Consequential etc Provisions) Order 2000, SI 2000/90, art 3(1), Sch 1 para 5). For these purposes, action taken by a Health Authority, Special Health Authority or Primary Care Trust (see HEALTH SERVICES vol 54 (2008) PARA 94 et seq) in the exercise of functions of the Secretary of State are to be regarded as action taken on his behalf: Parliamentary Commissioner Act 1967 Sch 3 para 8(2) (added by the Health Act 1999 (Supplementary, Consequential etc Provisions) Order 2000, SI 2000/90, Sch 1 para 5(b)).

Investigation of these bodies is undertaken by the Health Service Commissioners: see the Health Service Commissioners Act 1993; para 54 post; and HEALTH SERVICES vol 54 (2008) PARA 641.

18 Ie a local authority or other authority or body constituted for purposes of the public service or of local government or for the purposes of carrying on under national ownership any industry or undertaking or part of an industry or undertaking; and any other authority or body whose members are appointed by Her Majesty or any Minister of the Crown or government department, or whose revenues consist wholly or mainly of money provided by Parliament: Parliamentary Commissioner Act 1967 s 6(1), (1A) (s 6(1) amended and s 6(1A) added by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 Pt I para 39(1), (4)); Parliamentary Commissioner Act 1967 Sch 3 para 9.

19 Ibid Sch 3 para 9. The transactions referred to in the text are those for or relating to the acquisition of land compulsorily or in circumstances in which it could be acquired compulsorily, or the disposal as surplus of land so acquired: Sch 3 para 9.

20 This includes reserve and auxiliary and cadet forces: ibid Sch 3 para 10(1)(a).

21 Ibid Sch 3 para 10(1)(b) (amended by the Parliamentary and Health Service Commissioners Act 1987 s 1(3)).

22 Parliamentary Commissioners Act 1967 Sch 3 para 10(1)(c). Schedule 3 para 10(1)(c) does not apply to any action (not otherwise excluded from investigation by Sch 3) which is taken by the Secretary of State in connection with: (1) the provision of information relating to the terms and conditions of any employment covered by an agreement entered into by him under the Overseas Development and Co-operation Act 1980 s 12(1); or (2) the provision of any allowance, grant or supplement or any benefit (other than those relating to superannuation) arising from the designation of any person in accordance with such an agreement: Parliamentary Commissioner Act 1967 Sch 3 para 10(2) (added by the Parliamentary Commissioner Order 1983, SI 1983/1707, art 2).

23 Parliamentary Commissioner Act 1967 Sch 3 para 11.

UPDATE

38-43 Local authorities ... Government departments, corporations and unincorporated bodies subject to investigation

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

42 Matters excluded from investigation

TEXT AND NOTES--See also 1967 Act Sch 3 para 12 (added by Constitutional Reform Act 2005 Sch 17 para 6(4)).

TEXT AND NOTE 4--Action which is taken by an officer within a control zone or a supplementary control zone, and the actions of a British sea-fishery officer, are also removed from the exclusion set out in head (2): 1967 Act Sch 3 para 2(1) (Sch 3 para 2(1), (2) substituted by SI 2005/3430). 'Control zone' has the meaning given

collectively by the Channel Tunnel (International Arrangements) Order 1993, SI 1993/1813, Sch 1, the Channel Tunnel (Miscellaneous Provisions) Order 1994, SI 1994/1405, Sch 1, and the Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003, SI 2003/2818, art 2; 'supplementary control zone' has the meaning given by SI 1993/1813; and 'British sea-fishery officer' has the meaning given by the Sea Fisheries Act 1968 s 7: 1967 Act Sch 3 para 2(2).

NOTE 6--The action referred to in the text is action under the Extradition Act 2003: 1967 Act Sch 3 para 4 (substituted by Extradition Act 2003 Sch 3 para 2).

TEXT AND NOTES 8, 9--Parliamentary Commissioner Act 1967 Sch 3 para 6 amended: Armed Forces Act 2006 Sch 16 para 48.

TEXT AND NOTE 15--Parliamentary Commissioner Act 1967 Sch 3 para 6C repealed: SI 2008/2833.

TEXT AND NOTE 16--Parliamentary Commissioner Act 1967 Sch 3 para 7 amended: Armed Forces Act 2006 Sch 16 para 48.

TEXT AND NOTE 17--Now, head (11) action taken on behalf of the Secretary of State by a strategic health authority (see HEALTH SERVICES vol 54 (2008) PARA 94), a primary care trust (see HEALTH SERVICES vol 54 (2008) PARA 111) or a special health authority (see HEALTH SERVICES vol 54 (2008) PARA 136): Parliamentary Commissioner Act 1967 Sch 3 para 8 (amended by Health and Social Care (Community Health and Standards) Act 2003 Sch 13 para 1, Sch 14 Pt 7; SI 2002/2469; and SI 2008/3115).

NOTE 22--Head (1) refers also to the provision of information relating to the terms and conditions of any employment pursuant to the exercise of his powers under the International Development Act 2002 Pt I (ss 1-10) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 462): 1967 Act Sch 3 para 10(2) (amended by International Development Act 2002 Sch 3 para 2).

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43. Government departments, corporations and unincorporated bodies subject to investigation.

The government departments, corporations and unincorporated bodies¹ subject to investigation by the Parliamentary Commissioner for Administration are as follows²:

Advisory Board on Family Law³; Advisory Committee on Novel Foods and Processes⁴; Advisory, Conciliation and Arbitration Service; Advisory Council on Public Records⁵; Agricultural Dwelling House Advisory Committees⁶; Agricultural Wages Board for England and Wales⁷; agricultural wages committees; Ministry of Agriculture, Fisheries and Food; Arts Council of England⁸; Arts Council of Great Britain; Boundary Commission for Northern Ireland⁹; Britain-Russia Centre and the British East-West Centre¹⁰; British Association for Central and Eastern Europe¹¹; British Council; British Educational Communications and Technology Agency¹²; British Hallmarking Council¹³; British Library Board; British Museum¹⁴; British Potato Council¹⁵; British Tourist Authority¹⁶; Building Societies Commission; Broadcasting Standards Commission¹⁷; Cabinet Office¹⁸; Certification Officer; Central Rail Users' Consultative Committee¹⁹; Charity Commission; Civil Aviation Authority²⁰; Civil Justice Council²¹; Civil Service Commission; Coal Authority²²;

Commonwealth Institute²³; Commonwealth Scholarship Commission in the United Kingdom²⁴; Community Development Foundation²⁵; Competition Commission²⁶; Consumer Panel²⁷; Consumers' Committee for Great Britain under the Agricultural Marketing Act 1958²⁸; Authorised Conveyancing Practitioners Board²⁹; Co-operative Development Agency; Countryside Agency³⁰; Crafts Council; Crown Estate Office; Department for Culture, Media and Sport³¹; Customs and Excise; Ministry of Defence³²; Department for International Development³³; Design Council³⁴; Disability Rights Commission³⁵; Docklands Light Railway³⁶; Department for Education and Employment³⁷; Education Transfer Council³⁸; Central Bureau for Educational Visits and Exchanges; English National Board for Nursing, Midwifery and Health Visiting³⁹; Department of the Environment, Transport and the Regions⁴⁰; English Sports Council⁴¹; Environment Agency⁴²; Equal Opportunities Commission; Export Credits Guarantee Department; Office of the Director General of Fair Trading; British Film Institute; Fleet Air Arm Museum⁴³; Food Advisory Committee⁴⁴; Food from Britain⁴⁵; Food Standards Agency⁴⁶; Football Licensing Authority⁴⁷; Foreign and Commonwealth Office; Forestry Commission⁴⁸; Further Education Funding Council for England⁴⁹; Friendly Societies Commission⁵⁰; Registry of Friendly Societies⁵¹; Gaming Board for Great Britain⁵²; Gas and Electricity Consumer Council⁵³; Gas and Electricity Markets Authority⁵⁴; Geffrye Museum⁵⁵; Gene Therapy Advisory Committee⁵⁶; Health and Safety Commission; Health and Safety Executive; Commission for Health Improvement⁵⁷; Department of Health⁵⁸; Higher Education Funding Council for England⁵⁹; Historic Buildings and Monuments Commission for England; Historic Royal Palaces⁶⁰; Home-Grown Cereals Authority⁶¹; Home Office; Horniman Museum and Gardens⁶²; Horserace Betting Levy Board; Horticultural Development Council⁶³; Housing Corporation; Human Fertilisation and Embryology Authority⁶⁴; Immigration Services Commissioner⁶⁵; Imperial War Museum⁶⁶; Central Office of Information; Information Commissioner⁶⁷; Inland Revenue; International Rail Regulator⁶⁸; Intervention Board for Agricultural Produce; Investors in People UK⁶⁹; Committee of Investigation for Great Britain⁷⁰; Joint Nature Conservation Committee⁷¹; Land Registry; Legal Services Commission⁷²; the following general lighthouse authorities: the Corporation of the Trinity House of Deptford Strond⁷³, and the Commissioners of Northern Lighthouses; Local Government Commission for England⁷⁴; London Regional Passengers' Committee⁷⁵; Lord Chancellor's Advisory Committee on Legal Education and Conduct⁷⁶; Lord Chancellor's Department⁷⁷; Lord President of the Council's Office⁷⁸; Marshall Aid Commemoration Commission⁷⁹; Meat and Livestock Commission⁸⁰; Medical Practices Committee; Medical Workforce Standing Advisory Committee⁸¹; Milk Development Council⁸²; Millennium Commission⁸³; Museums and Galleries Commission; Museum of London⁸⁴; Museum of Science and Industry in Manchester⁸⁵; National Army Museum⁸⁶; National Biological Standards Board (UK)⁸⁷; National Consumer Council⁸⁸; National Debt Office; National Employers' Liaison Committee⁸⁹; National Endowment for Science, Technology and the Arts⁹⁰; National Film and Television School⁹¹; National Forest Company⁹²; National Gallery⁹³; Trustees of the National Heritage Memorial Fund; Natural History Museum⁹⁴; National Lottery Charities Board⁹⁵; National Lottery Commission⁹⁶; National Maritime Museum⁹⁷; National Museum of Science and Industry⁹⁸; National Museums and Galleries on Merseyside⁹⁹; National Portrait Gallery¹⁰⁰; National Radiological Protection Board¹⁰¹; Department for National Savings; Office for National Statistics¹⁰²; Nature Conservancy Council for England¹⁰³; New Millennium Experience Company Ltd¹⁰⁴; New Opportunities Fund¹⁰⁵; Commission for the New Towns¹⁰⁶; development corporations for new towns; Northern Ireland Court Service; Northern Ireland Human Rights Commission¹⁰⁷; Northern Ireland Office; Occupational Pensions Board¹⁰⁸; Occupational Pensions Regulatory Authority¹⁰⁹; Office of the Secretary of State for Scotland¹¹⁰; Oil and Pipelines Agency¹¹¹; Ordnance Survey; Parliamentary Boundary Commission for England¹¹²; Parliamentary Boundary Commission for Scotland¹¹³; Parliamentary Boundary Commission for Wales¹¹⁴; Parole Board¹¹⁵; Director of Passenger Rail Franchising¹¹⁶; Pensions Compensation Board¹¹⁷; Police Information Technology Organisation¹¹⁸; Consumer Council for Postal Services¹¹⁹; Postal Services Commission¹²⁰; Post Office Users' Council for Northern Ireland¹²¹; Post Office Users' Council for Scotland¹²²; Post Office Users' Council for Wales¹²³; Post Office Users' National Council¹²⁴; Probation Board for Northern Ireland¹²⁵; Commissioner for Protection Against Unlawful Industrial Action¹²⁶; Registrar of Public Lending Right; Public Record Office; Qualifications Curriculum Authority¹²⁷; Commission for Racial Equality; Rail Regulator¹²⁸; Rail Users' Consultative

Committee for Eastern England¹²⁹; Rail Users' Consultative Committee for North Eastern England¹³⁰; Rail Users' Consultative Committee for North Western England¹³¹; Rail Users' Consultative Committee for Scotland¹³²; Rail Users' Consultative Committee for Southern England¹³³; Rail Users' Consultative Committee for the Midlands¹³⁴; Rail Users' Consultative Committee for Wales¹³⁵; Rail Users' Consultative Committee for Western England¹³⁶; Regional development agencies (other than the London Development Agency)¹³⁷; Remploy Ltd¹³⁸; the following research councils: Alcohol Education and Research Council¹³⁹, Apple and Pear Research Council¹⁴⁰, Biotechnology and Biological Sciences Research Council¹⁴¹, Economic and Social Research Council, Engineering and Physical Sciences Research Council¹⁴², Medical Research Council, Natural Environment Research Council, Particle Physics and Astronomy Research Council¹⁴³, Council for the Central Laboratory of the Research Councils¹⁴⁴; Residuary Bodies; Reviewing Committee on the Export of Works of Art¹⁴⁵; Commissioner for the Rights of Trade Union Members¹⁴⁶; Royal Air Force Museum¹⁴⁷; Royal Armouries Museum¹⁴⁸; Royal Botanic Gardens, Kew¹⁴⁹; Royal Commission on Historical Manuscripts¹⁵⁰; Royal Commission on the Historical Monuments of England¹⁵¹; Royal Marines Museum¹⁵²; Royal Mint; Royal Naval Museum¹⁵³; Royal Navy Submarine Museum¹⁵⁴; Office of Her Majesty's Chief Inspector of Schools in England¹⁵⁵; Scientific Committee on Tobacco and Health¹⁵⁶; Sea Fish Industry Authority¹⁵⁷; Sir John Soane's Museum¹⁵⁸; Council for Small Industries in Rural Areas; Department of Social Security¹⁵⁹; Central Council for Education and Training in Social Work; Sports Council; Staff Commission for Wales (Comisiwn Staff Cymru)¹⁶⁰; Standards Board for England¹⁶¹; Committee on Standards in Public Life¹⁶²; Standing Dental Advisory Committee¹⁶³; Standing Medical Advisory Committee¹⁶⁴; Standing Nursing and Midwifery Advisory Committee¹⁶⁵; Standing Pharmaceutical Advisory Committee¹⁶⁶; Stationery Office; Tate Gallery¹⁶⁷; Committee for Monitoring Agreements on Tobacco Advertising and Sponsorship¹⁶⁸; Teacher Training Agency¹⁶⁹; Office of the Director General of Telecommunication; Great Britain-China Centre¹⁷⁰; Simpler Trade Procedures Board¹⁷¹; English Tourist Board; Board of Trade; Department of Trade and Industry; Traffic Director for London¹⁷²; the following training boards: Agricultural Training Board, Clothing and Allied Products Industry Training Board, Construction Industry Training Board, Engineering Industry Training Board, Hotel and Catering Industry Training Board, Plastics Processing Industry Training Board, Road Transport Industry Training Board; Treasure Valuation Committee¹⁷³; Treasury; Treasury Solicitor¹⁷⁴; United Kingdom Atomic Energy Authority¹⁷⁵; United Kingdom Register of Organic Food Standards¹⁷⁶; United Kingdom Sports Council¹⁷⁷; United Kingdom Xenotransplantation Interim Regulatory Authority¹⁷⁸; Unrelated Live Transplant Regulatory Authority¹⁷⁹; urban development corporations established for urban development areas wholly in England¹⁸⁰; Urban Regeneration Agency¹⁸¹; Victoria and Albert Museum¹⁸²; Wallace Collection¹⁸³; War Pensions Committees¹⁸⁴; Office of the Director General of Water Services¹⁸⁵; Welsh Office; Westminster Foundation for Democracy¹⁸⁶; Wine Standards Board of the Vintners' Company¹⁸⁷; Women's National Commission¹⁸⁸; Yorkshire Region Electricity Consumers' Committee¹⁸⁹; and Youth Justice Board for England and Wales¹⁹⁰.

1 Ministers or officers of the government departments and members or officers of the corporations and unincorporated bodies listed are included: Parliamentary Commissioner Act 1967 s 4(1), (8) (substituted by the Parliamentary and Health Service Commissioners Act 1987 s 1(1)).

In relation to any function exercised on behalf of the Crown by a department or authority to which the Parliamentary Commissioner Act 1967 applies which was previously exercisable on behalf of the Crown by a department or authority to which the Act does not apply, the reference to the department or authority to which the Act applies includes a reference to the other department or authority if the other department or authority: (1) ceased to exercise the function before the commencement of the Act; or (2) where it exercised the function after the commencement of the Act, only did so when it was a department or authority to which the Act applied: Parliamentary Commissioner Act 1967 s 4(1), Sch 2 Note 10 (s 4, Sch 2 substituted by the Parliamentary and Health Service Commissioners Act 1987 s 1(1), (2), Sch 1).

2 See the Parliamentary Commissioner Act 1967 s 4(1) (as substituted: see note 1 supra), Sch 2 (as substituted and amended); and the text and notes 3-190 infra. As from days to be appointed Sch 2 (as substituted and amended) is amended by the Criminal Justice and Court Services Act 2000 s 11(2), Sch 2 para 17 to include a reference to the Children and Family Court Advisory and Support Service; by the Care Standards Act 2000 ss 6, 54, Sch 1 para 24 to include references to the General Social Care Council and the National Care

Standards Commission; by the Access to Justice Act 1999 s 51, Sch 8 para 9 to include a reference to the Legal Services Complaints Commissioner; by the Police (Northern Ireland) Act 2000 s 78(1), Sch 6 para 2 to include a reference to the Northern Ireland Policing Board; and by the Transport Act 2000 s 227, Sch 22 Pt II para 16 to include references to the Rail Passengers' committees and the Rail Passengers' Council. At the date at which this volume states the law no such days had been appointed.

The Parliamentary Commissioner Act 1967 Sch 2 may be amended by Order in Council by the alteration of any entry or note, the removal of any entry or note or the insertion of any additional entry or note: Parliamentary Commissioner Act 1967 s 4(2) (as so substituted). Any statutory instrument made pursuant to this power will be subject to annulment in pursuance of a resolution of either House of Parliament: s 4(7) (as so substituted).

An Order in Council may only insert an entry if it relates to a government department, to a corporation or body whose functions are exercised on behalf of the Crown, or to a corporation or body (1) which is established by virtue of Her Majesty's prerogative or by an Act of Parliament or Order in Council or order made under an Act of Parliament or which is established in any other way by a minister or by a government department; (2) at least half of whose revenues derive directly from money provided by Parliament, a levy authorised by an enactment, a fee or charge of any other description so authorised or more than one of those sources; and (3) which is wholly or partly constituted by appointment made by Her Majesty or a Minister of the Crown or government department: s 4(3) (as so substituted).

No entry may be made in respect of a corporation or body whose sole activity is, or whose main activities are: (a) the provision of education, or the provision of training otherwise than under the Industrial Training Act 1982; (b) the development of curricula, the conduct of examinations or the validation of educational courses; (c) the control of entry to any profession or the regulation of the conduct of members of any profession; or (d) the investigation of complaints by members of the public regarding the actions of any person or body, or the supervision or review of such investigations or of steps taken following them: Parliamentary Commissioner Act 1967 s 4(4), (5) (as so substituted). Further, no entry may be made in respect of a corporation or body operating in an exclusively or predominantly commercial manner or a corporation carrying on under national ownership an industry or undertaking or part of an industry or undertaking: s 4(6) (as so substituted).

No entry may be made if the result of making it would be that the Parliamentary Commissioner could investigate action which can be investigated by the Welsh Administration Ombudsman under the Government of Wales Act 1998 s 111, Sch 9 (as amended) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS): Parliamentary Commissioner Act 1967 s 4(3A) (added by the Government of Wales Act 1998 s 125, Sch 12 para 6).

No entry may be made in respect of: (i) the Scottish Administration or any part of it; (ii) any Scottish public authority with mixed functions or no reserved functions within the meaning of the Scotland Act 1998; or (iii) the Scottish Parliamentary Corporate Body: Parliamentary Commissioner Act 1967 s 4(3B) (added by the Scotland Act 1998 (Consequential Modifications) (No 1) Order 1999, SI 1999/1042, art 3, Sch 1 para 5; and substituted by the Scotland Act 1999 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 Pt I para 39(1), (2)).

- 3 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.
- 4 Entry added by *ibid* art 2.
- 5 Entry added by *ibid* art 2.
- 6 Entry added by *ibid* art 2.
- 7 Entry added by the Parliamentary Commissioner (No 2) Order 1999, SI 1999/2028, art 2.
- 8 Entry added by the Parliamentary Commissioner Order 1995, SI 1995/1615, art 2.
- 9 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.
- 10 Entry added by the Parliamentary Commissioner (No 2) Order 1999, SI 1999/2028, art 2.
- 11 Entry added by *ibid* art 2.
- 12 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.
- 13 Entry added by *ibid* art 2.
- 14 Entry added by *ibid* art 2.
- 15 Entry added by *ibid* art 2.
- 16 Entry added by *ibid* art 2.

17 Entry added by *ibid* art 2.

18 Entry added by the Parliamentary Commissioner (No 2) Order 1999, SI 1999/2028, art 2. The reference to the Cabinet Office does not include any of the Secretariats, the Joint Intelligence Organisation or the office of the Secretary of the Cabinet and Head of the Home Civil Service, but includes the executive agencies of the Cabinet Office and the office of any Minister whose expenses are defrayed out of moneys provided by Parliament for the service of the Cabinet Office, and the reference to the Treasury includes its subordinate departments and the office of any minister whose expenses are defrayed out of moneys provided by Parliament for the service of the Treasury: Parliamentary Commissioner Act 1967 Sch 2 Note 6 (substituted by the Parliamentary Commissioner (No 2) Order 1999, SI 1999/2028, art 3).

19 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.

20 Entry added by *ibid* art 2.

21 Entry added by *ibid* art 2.

22 Entry added by the Coal Industry Act 1994 s 1, Sch 1 Pt I para 10.

23 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.

24 Entry added by *ibid* art 2.

25 Entry added by *ibid* art 2.

26 Entry added by the Parliamentary Commissioner (No 2) Order 1999, SI 1999/2028, art 2.

27 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.

28 Entry added by *ibid* art 2.

29 Entry added by *ibid* art 2.

30 Entry substituted by the Development Commission (Transfer of Functions and Miscellaneous Provisions) Order 1999, SI 1999/416, art 3(d), Sch 1 para 3.

31 Entry added by the Secretary of State for Culture, Media and Sport Order 1997, 1997/1744, art 2(2), Schedule para 2.

32 The reference to the Ministry of Defence includes the Defence Council, the Admiralty Board, the Army Board and the Air Force Board: Parliamentary Commissioner Act 1967 Sch 2 Note 1 (as substituted: see note 1 *supra*).

33 Entry added by the Transfer of Functions (International Development) Order 1997, SI 1997/1749, art 8.

34 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.

35 Entry added the Parliamentary Commissioner Order 2000, SI 2000/739, art 2.

36 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.

37 Entry added by the Transfer of Functions (Science) Order 1995, 1995/2985, art 11(1).

38 Entry substituted by the School Standards and Framework Act 1998 s 136(2).

39 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.

40 Entry added by the Secretary of State for the Environment, Transport and the Regions Order 1997, SI 1997/2971, art 2(b), Schedule para 2(b).

41 Entry added by the Parliamentary Commissioner (No 2) Order 1996, SI 1996/2601, art 2.

42 Entry added by the Environment Act 1995 s 120, Sch 22 para 11. The reference to the Environment Agency is a reference to that Agency in relation to all its functions other than its flood defence functions, within the meaning of the Water Resources Act 1991 (see *WATER AND WATERWAYS* vol 101 (2009) PARAS 573-574): Parliamentary Commissioner Act 1967 Sch 2 note 1A (added by the Environment Act 1995 s 120, Sch 22 para 11(b)). No investigation under the Parliamentary Commissioner Act 1967 is to be conducted in respect of any action in connection with functions of the Environment Agency in relation to Wales (within the meaning of the

Government of Wales Act 1998): Parliamentary Commissioner Act 1967 Sch 2 note 1A (as so added; amended by the Government of Wales Act 1998 s 125, Sch 12 para 9(b)).

43 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.

44 Entry added by *ibid* art 2.

45 Entry added by *ibid* art 2.

46 Entry added by the Food Standards Act 1999 s 40(1), Sch 5 para 3.

47 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.

48 However, no investigation under the Parliamentary Commissioner Act 1967 may be conducted in respect of any action in connection with the functions of the Forestry Commissioners in relation to Wales (within the meaning of the Government of Wales Act 1998): Parliamentary Commissioner Act 1967 Sch 2 note 1B (added by the Government of Wales Act 1998 Sch 12 para 9(c)).

49 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.

50 Entry added by the Friendly Societies Act 1992 s 1, Sch 1 para 12.

51 The reference to the Registry of Friendly Societies includes the Central Office, the Office of the Assistant Registrar of Friendly Societies for Scotland and the Office of the Chief Registrar and the Friendly Societies Commission: Parliamentary Commissioner Act 1967 Sch 2 Note 2 (amended by the Friendly Societies Act 1995 (Transitional and Consequential Provisions) Regulations 1995, SI 1995/710, reg 5).

52 Entry added by the Parliamentary Commissioner (No 2) Order 1999, SI 1999/2028, art 2.

53 Entry added by the Utilities Act 2000 s 108, Sch 6 Pt III para 43.

54 Entry added by *ibid* Sch 6 Pt III para 43.

55 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.

56 Entry added by *ibid* art 2.

57 Entry added by the Health Act 1999 s 19(3), Sch 2 para 17.

58 Entry added by the Transfer of Functions (Health and Social Security) Order 1988, SI 1988/1843, art 5(2).

59 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.

60 Entry added by *ibid* art 2.

61 Entry added by *ibid* art 2.

62 Entry added by *ibid* art 2.

63 Entry added by *ibid* art 2.

64 Entry added by the Human Fertilisation and Embryology Act 1990 s 5, Sch 1 para 14.

65 Entry added by the Immigration and Asylum Act 1999 s 83, Sch 5 Pt II para 25.

66 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.

67 Entry added by the Freedom of Information Act 2000 s 18(4), Sch 2 Pt I para 4.

68 Entry added by the Railways Regulations 1998, SI 1998/1340, reg 9(6), Sch 2 para 7.

69 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.

70 Entry added by *ibid* art 2.

71 Entry added by *ibid* art 2.

72 Entry added by the Access to Justice Act 1999 s 24, Sch 4 para 2.

73 In the case of the Corporation of the Trinity House of Deptford Strond an investigation under the Parliamentary Commissioner Act 1967 may only be conducted in respect of action in connection with its functions as a general lighthouse authority: Sch 2 Note 3 (as substituted: see note 1 supra).

74 Entry added by the Local Government Act 1992 s 12, Sch 2 para 11.

75 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.

76 Entry added by *ibid* art 2.

77 The reference to the Lord Chancellor's Department includes the department of the Accountant General of the Supreme Court and the department of the Public Trustee (whether or not either office is held by the Permanent Secretary to the Lord Chancellor): Parliamentary Commissioner Act 1967 Sch 2 Note 4 (as substituted: see note 1 supra). It is proposed that as from 1 April 2001 the Public Trustee's trust work will be transferred to the Official Solicitor. The combined office is to be renamed, and the two offices may be held by the same person. See further Making Changes: The Future of the Public Trust Office (available at www.publictrust.gov.uk).

78 The reference to the Lord President of the Council's Office does not include the Privy Council Office: Parliamentary Commissioner Act 1967 Sch 2 Note 5 (as substituted (see note 1 supra); and amended by the Transfer of Functions (National Heritage) Order 1992, SI 1992/1311, art 12(1)(b)).

79 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.

80 Entry added by *ibid* art 2.

81 Entry added by *ibid* art 2.

82 Entry added by *ibid* art 2.

83 Entry added by *ibid* art 2.

84 Entry added by *ibid* art 2.

85 Entry added by *ibid* art 2.

86 Entry added by *ibid* art 2.

87 Entry added by *ibid* art 2.

88 Entry added by *ibid* art 2.

89 Entry added by *ibid* art 2.

90 Entry added by *ibid* art 2.

91 Entry added by *ibid* art 2.

92 Entry added by *ibid* art 2.

93 Entry added by *ibid* art 2.

94 Entry added by *ibid* art 2.

95 Entry added by *ibid* art 2.

96 Entry added by the National Lottery Act 1998 s 1(5), Sch 1 para 9(a).

97 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.

98 Entry added by *ibid* art 2.

99 Entry added by *ibid* art 2.

100 Entry added by *ibid* art 2.

- 101 Entry added by *ibid* art 2.
- 102 Entry added by the Transfer of Functions (Registration and Statistics) Order 1996, SI 1996/273, art 5(1), Sch 2 para 15(b).
- 103 Entry substituted by the Environmental Protection Act 1990 s 128, Sch 6 para 23.
- 104 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.
- 105 Entry added by *ibid* art 2.
- 106 In the case of the Commission for the New Towns or a development corporation for a new town, no investigation is to be conducted under the Parliamentary Commissioner Act 1967 in respect of any action in connection with functions in relation to housing: Sch 2 Note 7 (as substituted (see note 1 *supra*); and amended by the Government of Wales Act 1998 s 129, Sch 15 para 2).
- 107 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.
- 108 Entry added by the Parliamentary Commissioner Order 1995, SI 1995/1615, art 2.
- 109 Entry added by the Pensions Act 1995 s 1, Sch 1 para 10.
- 110 Entry added by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 Pt I para 39.
- 111 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.
- 112 Entry added by *ibid* art 2.
- 113 Entry added by the Parliamentary Commissioner (No 2) Order 1999, SI 1999/2028, art 1.
- 114 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.
- 115 Entry added by *ibid* art 2.
- 116 Entry added by the Railways Act 1993 s 1, Sch 1 para 7.
- 117 Entry added by the Pensions Act 1995 s 78, Sch 2 para 9.
- 118 Entry added by the Police Act 1997 s 134(1), Sch 9 para 7.
- 119 Entry added by the Postal Services Act 2000 s 127(4), Sch 8 Pt II para 9.
- 120 Entry added by the Postal Services Regulations 1999, SI 1999/2107, reg 3(4).
- 121 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.
- 122 Entry added by *ibid* art 2; and prospectively repealed by the Postal Services Act 2000 s 127(6), Sch 9.
- 123 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2; and prospectively repealed by the Postal Services Act 2000 Sch 9.
- 124 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2; and prospectively repealed by the Postal Services Act 2000 Sch 9.
- 125 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.
- 126 Entry added by *ibid* art 2.
- 127 Entry added by *ibid* art 2.
- 128 Entry added by the Railways Act 1993 Sch 1 para 7.
- 129 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.
- 130 Entry added by *ibid* art 2.
- 131 Entry added by *ibid* art 2.

- 132 Entry added by *ibid* art 2.
- 133 Entry added by *ibid* art 2.
- 134 Entry added by *ibid* art 2.
- 135 Entry added by *ibid* art 2.
- 136 Entry added by *ibid* art 2.
- 137 Entry added by the Regional Development Agencies Act 1998 s 32, Sch 7 para 2; and amended by the Greater London Authority Act 1999 s 394(2).
- 138 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.
- 139 Entry added by the Parliamentary Commissioner (No 2) Order 1999, SI 1999/2028, art 2.
- 140 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.
- 141 Entry added by the Parliamentary Commissioner Order 1995, SI 1995/1615, art 2.
- 142 Entry added by *ibid* art 2.
- 143 Entry added by *ibid* art 2.
- 144 Entry added by *ibid* art 2.
- 145 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.
- 146 Entry added by *ibid* art 2.
- 147 Entry added by *ibid* art 2.
- 148 Entry added by *ibid* art 2.
- 149 Entry added by *ibid* art 2.
- 150 Entry added by *ibid* art 2.
- 151 Entry added by *ibid* art 2.
- 152 Entry added by *ibid* art 2.
- 153 Entry added by *ibid* art 2.
- 154 Entry added by *ibid* art 2.
- 155 Entry added by the Education (Schools) Act 1992 ss 1(6), 5(6), Sch 1 para 8.
- 156 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.
- 157 Entry added by *ibid* art 2.
- 158 Entry added by *ibid* art 2.
- 159 Entry added by the Transfer of Functions (Health and Social Security) Order 1988, SI 1988/1843, art 5(2).
- 160 Entry added by the Local Government (Wales) Act 1994 s 40(4), Sch 14 para 11.
- 161 Entry added by the Local Government Act 2000 s 57, Sch 4 para 17.
- 162 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.
- 163 Entry added by *ibid* art 2.
- 164 Entry added by *ibid* art 2.

- 165 Entry added by *ibid* art 2.
- 166 Entry added by *ibid* art 2.
- 167 Entry added by *ibid* art 2.
- 168 Entry added by *ibid* art 2.
- 169 Entry added by *ibid* art 2.
- 170 Entry added by *ibid* art 2.
- 171 Entry added by *ibid* art 2.
- 172 Entry added by the Road Traffic Act 1991 s 52, Sch 5 para 11.
- 173 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.
- 174 The reference to the Treasury Solicitor does not include a reference to Her Majesty's Procurator General: Parliamentary Commissioner Act 1967 Sch 2 Note 8 (as substituted: see note 1 *supra*).
- 175 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.
- 176 Entry added by *ibid* art 2.
- 177 Entry added by the Parliamentary Commissioner (No 2) Order 1996, SI 1996/2601, art 2.
- 178 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.
- 179 Entry added by *ibid* art 2.
- 180 Entry amended by the Government of Wales Act 1998 s 129, Sch 12 para 9(a). In the case of an urban development corporation no investigation under the Parliamentary Commissioner Act 1967 is to be conducted in respect of any action in connection with functions in relation to town and country planning: Sch 2 Note 9 (as substituted: see note 1 *supra*).
- 181 Entry added by the Leasehold Reform, Housing and Urban Development Act 1993 s 187(1), Sch 21 para 3(1). In the case of the Urban Regeneration Agency no investigation under the Parliamentary Commissioner Act 1967 s to be conducted in respect of any action in connection with functions in relation to town and country planning: Sch 2 note 11 (added by the Leasehold Reform, Housing and Urban Development Act 1993 s 187(1), Sch 21 para 3(2)).
- 182 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.
- 183 Entry added by *ibid* art 2.
- 184 Entry added by *ibid* art 2.
- 185 Entry added by the Water Act 1989 s 5, Sch 3 para 6.
- 186 Entry added by the Parliamentary Commissioner Order 1999, SI 1999/277, art 2.
- 187 Entry added by *ibid* art 2.
- 188 Entry added by *ibid* art 2.
- 189 Entry added by *ibid* art 2.
- 190 Entry added by the Parliamentary Commissioner (No 2) Order 1999, SI 1999/2028, art 2.

UPDATE

38-43 Local authorities ... Government departments, corporations and unincorporated bodies subject to investigation

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3: see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

43 Government departments, corporations and unincorporated bodies subject to investigation

TEXT AND NOTES--1967 Act Sch 2 now as substituted by SI 2008/3115, and amended by the Health and Social Care Act 2008 Sch 5 para 56, Sch 15 Pts 1, 6, 7; the Marine and Coastal Access Act 2009 Sch 2 para 2; the Apprenticeships, Skills, Children and Learning Act 2009 Sch 12 para 2; SI 2009/1754; and SI 2009/2748. The following government departments, corporations and unincorporated bodies are now subject to investigation: Administration of Radioactive Substances Advisory Committee; Advisory Board on the Registration of Homeopathic Products; Advisory Committee on Advertising; Advisory Committee on Animal Feedingstuffs; Advisory Committee on Antimicrobial Resistance and Healthcare Associated Infections; Advisory Committee on Borderline Substances; Advisory Committee on Carbon Abatement; Advisory Committee on Clinical Excellence Awards; Advisory Committee on Consumer Engagement; Advisory Committee on Dangerous Pathogens; Advisory Committee on the Government Art Collection; Advisory Committee on Hazardous Substances; Advisory Committee on Historic Wreck Sites; Advisory Committee on Microbiological Safety of Food; Advisory Committee on National Historic Ships; Advisory Committee on Novel Foods and Processes; Advisory Committee on Organic Standards; Advisory Committee on Pesticides; Advisory Committee on Releases to the Environment; Advisory Committee on the Safety of Blood, Tissues and Organs; Advisory, Conciliation and Arbitration Service; Advisory Council on Historical Manuscripts; Advisory Council on Libraries; Advisory Council on the Misuse of Drugs; Advisory Council on National Records and Archives; Advisory Council on Public Records; Advisory Group on Hepatitis; Advisory Group on Medical Countermeasures; Advisory Panel on Beacon Councils; Advisory Panel on Public Sector Information; Advisory Panel on Standards for the Planning Inspectorate; Agricultural dwelling house advisory committees; Agricultural Wages Board for England and Wales; Agricultural wages committees; Agriculture and Horticulture Development Board; Air Quality Expert Group; Alcohol Education and Research Council; Animal Welfare Advisory Committee; Animals Procedures Committee; Appeal Officer for Community Interest Companies; Arts and Humanities Research Council; Arts Council of England; Authorised Conveyancing Practitioners Board; Better Regulation Commission; Big Lottery Fund; Biotechnology and Biological Sciences Research Council; Board of the Pension Protection Fund; Board of Trade; Boundary Commission for England; Boundary Commission for Northern Ireland; Boundary Commission for Scotland; Boundary Commission for Wales; British Council; British Educational Communications and Technology Agency; British Film Institute; British Hallmarking Council; British Library Board; British Museum; British Pharmacopoeia Commission; British Tourist Authority; Building Regulations Advisory Committee; Cabinet Office; Capacity Builders; Capital for Enterprise Ltd; Care Quality Commission; Central Advisory Committee on Pensions and Compensation; Central Bureau for Educational Visits and Exchanges; Central Office of Information; Certification Officer; Charity Commission; Chief Inspector of Criminal Justice for Northern Ireland; Child Maintenance and Enforcement Commission; Children and Family Court Advisory and Support Service; Civil Aviation Authority; Civil Justice Council; Coal Authority; Commission for Architecture and the Built Environment; Commission for Equality and Human Rights; Commission for Integrated Transport; Commission for the New Towns; Commission for Rural Communities; Commissioner for Victims and Witnesses; Committee on the Biological Safety of Blood and Tissues for Transplantation; Committee on Carcinogenicity of Chemicals in Food, Consumer Products and the

Environment; Commission on Human Medicines; Committee on the Medical Aspects of Air Pollutants; Committee on Medical Aspects of Radiation in the Environment; Committee on Mutagenicity of Chemicals in Food, Consumer Products and the Environment; Committee on Radioactive Waste Management; Committee on the Safety of Devices; Committee on Standards in Public Life; Committee on Toxicity of Chemicals in Food, Consumer Products and the Environment; Commonwealth Scholarship Commission in the United Kingdom; Community Development Foundation; Competition Commission; Competition Service; Construction Industry Training Board; Consumer Council for Water; Correctional Services Accreditation Panel; Council for Science and Technology; Crown Estate Office; Culture East Midlands; Culture North East; Culture North West; Culture South East; Culture South West; Culture West Midlands; Cycling England; Darwin Advisory Committee; Defence Nuclear Safety Committee; Defence Scientific Advisory Council; DEFRA Science Advisory Council; Department for Business, Innovation and Skills; Department for Children, Schools and Families; Department for Communities and Local Government; Department for Culture, Media and Sport; Department for Energy and Climate Change; Department for Environment, Food and Rural Affairs; Department for International Development; Department for Transport; Department for Work and Pensions; Department of Health; Design Council; Disabled Persons Transport Advisory Committee; Economic and Social Research Council; Electoral Commission; Engineering Construction Industry Training Board; Engineering and Physical Sciences Research Council; England Implementation Group for the Animal Health and Welfare Strategy for Great Britain; English Sports Council; English Tourist Board; Environment Agency; Ethics Group; National DNA Database; Ethnic Minority Business Forum; Expert Advisory Group on AIDS; Expert Panel on Air Quality Standards; Export Credits Guarantee Department; Director of Fair Access to Higher Education; Farm Animal Welfare Council; Film Industry Training Board for England and Wales; Firebuy Ltd; Fleet Air Arm Museum; Food from Britain; Food Standards Agency; Football Licensing Authority; Foreign and Commonwealth Office; Forestry Commission; Fuel Poverty Advisory Group; Futurebuilders Advisory Panel; Gambling Commission; Gangmasters Licensing Authority; Gas and Electricity Markets Authority; Geffrye Museum; Gene Therapy Advisory Committee; General Advisory Committee on Science; General Social Care Council; Genetics and Insurance Committee; Government Actuary's Department; Government Equalities Office; Great Britain-China Centre; Health and Safety Executive; Health Protection Agency; Her Majesty's Revenue and Customs; Her Majesty's Stationery Office; Her Majesty's Treasury; Herbal Medicines Advisory Committee; Higher Education Funding Council for England; Historic Buildings and Monuments Commission for England; Historic Royal Palaces; Home Office; Homes and Communities Agency; Horniman Public Museum and Public Park Trust; Horserace Betting Levy Board; Housing Corporation; Human Fertilisation and Embryology Authority; Human Genetics Commission; Human Tissue Authority; Immigration Services Commissioner; Imperial War Museum; Independent Advisory Group on Sexual Health and HIV; Independent Barring Board; Independent Living Fund (2006); Independent Reconfiguration Panel; Independent Regulator of NHS Foundation Trusts; Independent Review Panel for Advertising; Independent Review Panel on the Classification of Borderline Products; Independent Scientific Group on Cattle TB; Industrial Development Advisory Board; Information Commissioner; International Rail Regulator; Investors in People UK; Joint Committee on Vaccination and Immunisation; Joint Nature Conservation Committee; Land Registry; Law Commission; Learning and Skills Council for England; Leasehold Advisory Service; Legal Deposit Advisory Panel; Legal Services Commission; Legal Services Complaints Commissioner; the following general lighthouse authorities: the Corporation of the Trinity House of Deptford Strond, and the Commissioners of Northern Lighthouses; Living East; Local Better Regulation Office; Low Pay Commission; Marine Management Organisation; Marshall Aid Commemoration Commission; Medical Research Council; Medical Workforce Standing Advisory Committee; Ministry of Defence; Ministry of Justice; Museum of Science and Industry in

Manchester; Museums, Libraries and Archives Council; National Army Museum; National Clinical Audit Advisory Group; National Community Forum; National Consumer Council; National Employer Advisory Board; National Endowment for Science, Technology and the Arts; National Forest Company; National Gallery; National Heritage Memorial Fund; National Housing and Planning Advice Unit; National Information Governance Board for Health and Social Care; National Joint Registry Steering Committee; National Lottery Commission; National Maritime Museum; National Museum of Science and Industry; National Museums and Galleries on Merseyside; National Policing Improvement Agency; National Portrait Gallery; National Specialist Commissioning Advisory Group; Natural England; Natural Environment Research Council; Natural History Museum; Northern Ireland Court Service; Northern Ireland Human Rights Commission; Northern Ireland Law Commission; Northern Ireland Legal Services Commission; Northern Ireland Office; Northern Ireland Police Fund; Northern Ireland Policing Board; Nuclear Decommissioning Authority; Nuclear Liabilities Fund; Nuclear Research Advisory Council; Nutrition Forum; Official receiver; Office for Standards in Education, Children's Services and Skills; Office for Tenants and Social Landlords; Office of the Children's Commissioner; Office of Communications; Office of Fair Trading; Office of Public Sector Information; Office of Qualifications and Examinations Regulation; Office of Rail Regulation; Office of the Regulator of Community Interest Companies; Office of the Renewable Fuels Agency; Office of the Secretary of State for Scotland; Official Solicitor to the Supreme Court; Oil and Pipelines Agency; Olympic Delivery Authority; Olympic Lottery Distributor; Ordnance Survey; Parades Commission for Northern Ireland; Parole Board; Partnerships for Schools; Pensions Regulator; Personal Accounts Delivery Authority; Pesticide Residues Committee; Postal Services Commission; Postgraduate Medical Education and Training Board; Probation Board for Northern Ireland; Probation trusts; Registrar of Public Lending Right; Public Record Office; Qualifications and Curriculum Development Agency; Quality Improvement Agency; Rail Passengers' Council; Railway Heritage Committee; Regional development agencies (other than the London Development Agency); Regional industrial development boards; Remploy Ltd; Renewables Advisory Board; Residuary Bodies; Reviewing Committee on the Export of Works of Art; Royal Air Force Museum; Royal Armouries Museum; Royal Botanic Gardens, Kew; Royal Commission on Environmental Pollution; Royal Commission on Historical Manuscripts; Royal Marines Museum; Royal Mint; Royal Naval Museum; Royal Navy Submarine Museum; Royal Ulster Constabulary George Cross Foundation; School Food Trust; Science and Technology Facilities Council; Scientific Advisory Committee on Nutrition; Sea Fish Industry Authority; Security Industry Authority; Sentencing Advisory Panel; Sentencing Guidelines Council; Serious Organised Crime Agency; Sir John Soane's Museum; SITPRO Ltd; Social Fund Commissioner; Social Science Research Committee; Spongiform Encephalopathy Advisory Committee; Standards Board for England; Standing Dental Advisory Committee; Statistics Board; Strategic Advisory Board for Intellectual Property Policy; Sustainable Development Commission; Tate Gallery; Technology Strategy Board; Theatres Trust; Training and Development Agency for Schools; Treasure Valuation Committee; Treasury Solicitor; UK Chemical Weapons Convention National Authority Advisory Committee; UK Commission for Employment and Skills; UK Film Council; UK National Authority Advisory Group; Union Modernisation Fund Supervisory Board; United Kingdom Atomic Energy Authority; United Kingdom Sports Council; United Kingdom Xenotransplantation Interim Regulatory Authority; Unlinked Anonymous Surveys Steering Group; Unrelated Live Transplant Regulatory Authority; Urban development corporations established for urban development areas wholly in England; Urban Regeneration Agency; Valuation Tribunal Service; Veterinary Products Committee; Veterinary Residues Committee; Victims Advisory Panel; Victoria and Albert Museum; Wales Office; Wallace Collection; War pensions committees; Water Services Regulation Authority; Westminster Foundation for Democracy; Women's National Commission; Working Ventures UK; Yorkshire Culture; Youth Justice Board for

England and Wales; and Zoos Forum. The notes to Sch 2 (as substituted) now make provision in respect of the following: Cabinet Office; Commission for the New Towns; Environment Agency; Forestry Commission; Government Actuary's Department; Health Protection Agency; HM Treasury; Homes and Communities Agency; Corporation of the Trinity House of Deptford Strond; Ministry of Defence; Ministry of Justice; Serious Organised Crime Agency; Statistics Board; Treasury Solicitor; Urban development corporations; and Urban Development Agency.

NOTES--Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see PARA 196A.

NOTES 2, 42, 48--References to Government of Wales Act 1998 now to Government of Wales Act 2006: 1967 Act Sch 2 notes 1A, 1B (amended by Government of Wales Act 2006 Sch 10 para 8).

NOTE 2--1967 Act s 4(3A) amended: Public Services Ombudsman (Wales) Act 2005 Sch 6 para 3.

NOTE 74--Reference to the Local Government Commission for England omitted: Local Government Act 1992 s 12 (repealed by Local Democracy, Economic Development and Construction Act 2009 Sch 7).

TEXT AND NOTES 83, 95, 105--National Lottery Charities Board, Millennium Commission and New Opportunities Fund abolished: National Lottery Distributors Dissolution Order 2006, SI 2006/2915.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/3. NON-JUDICIAL REDRESS IN RESPECT OF ADMINISTRATIVE ACTION/(2) THE PARLIAMENTARY COMMISSIONER FOR ADMINISTRATION/44. Procedure and evidence.

44. Procedure and evidence.

A complaint may be made by any individual or body of persons whether incorporated or not, other than local authorities and certain other public authorities and bodies¹. The complaint must be made by the person aggrieved² himself unless he has died or is for any reason unable to act for himself³. The person aggrieved must either be resident in the United Kingdom⁴ or the complaint must relate: (1) to action taken in relation to him while he was present in the United Kingdom (or on certain off-shore installations, or on a United Kingdom registered ship or aircraft) or in relation to rights or obligations which accrued or arose in the United Kingdom (or on such installation, ship or aircraft)⁵; or (2) to action taken in any country or territory outside the United Kingdom by an officer (not being an honorary consular officer) in the exercise of a consular function on behalf of the government of the United Kingdom and the person aggrieved must be a citizen of the United Kingdom and Colonies who has the right of abode⁶ in the United Kingdom⁷.

A complaint must be made to a member of the House of Commons not later than 12 months from the day on which the person aggrieved first had notice of the matters alleged in the complaint; but the Parliamentary Commissioner may conduct an investigation pursuant to a complaint not made within that period if he considers that there are special circumstances which make it proper to do so⁸. Any question as to whether a complaint has been duly made must be determined by the Parliamentary Commissioner⁹.

Where the Parliamentary Commissioner proposes to conduct an investigation pursuant to a complaint, he must afford to the principal officer of the department or authority concerned, and to any other person who is alleged in the complaint to have taken or authorised the action complained of, an opportunity to comment on any allegations contained in the complaint¹⁰. Every investigation must be conducted in private but, apart from any provisions in the Parliamentary Commissioner Act 1967 itself, the Parliamentary Commissioner may adopt such procedure as he considers appropriate for such investigation¹¹. He may obtain information from such persons and in such manner, and make such inquiries, as he thinks fit, and he may also determine whether any person is to be represented, by counsel or solicitor or otherwise, in the investigation¹². He is empowered, if he thinks fit, to pay expenses and allowances¹³ to the person by whom the complaint was made and to any other person who attends or furnishes information for the purposes of an investigation¹⁴.

The conduct of an investigation does not affect any action taken by the department or authority concerned, or any power or duty of that department or authority to take further action with respect to any matters subject to the investigation¹⁵.

For the purposes of an investigation the Parliamentary Commissioner may require any minister, officer or member of the department, authority, corporation or unincorporated body concerned or any other person who is in his opinion able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document¹⁶. He has the same powers as the High Court in respect of the attendance and examination of witnesses (including the administration of oaths or affirmations and the examination of witnesses abroad) and in respect of the production of documents¹⁷. If any person without lawful excuse obstructs the Parliamentary Commissioner or any of his officers in the performance of his statutory functions, or is guilty of any act or omission in relation to an investigation which would constitute contempt of court¹⁸ if that investigation were a proceeding in the High Court, the Parliamentary Commissioner may certify the offence to the High Court¹⁹. Where an offence is so certified, the court may inquire into the matter and, after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and after hearing any statement that may be offered in defence, deal with him in any manner in which the court could deal with him if he had committed the like offence in relation to the court²⁰.

In any case where the Parliamentary Commissioner decides not to conduct an investigation, he must send to the member of the House of Commons by whom the request for investigation was made²¹ a statement of his reasons for not conducting an investigation²². In any case where he conducts an investigation he must send a report to the member of the House of Commons²³, to the principal officer of the department or authority concerned and to any other person who is alleged in the relevant complaint to have taken or authorised the action complained of²⁴. If, after conducting an investigation, it appears to the Parliamentary Commissioner that injustice has been caused to the person aggrieved in consequence of maladministration and that the injustice has not been, or will not be, remedied, he may, if he thinks fit, lay a special report on the case before each House of Parliament²⁵. Annual reports on the performance of his functions are required to be laid before each House of Parliament by the Parliamentary Commissioner, and he may from time to time, if he thinks fit, lay other reports as to his functions before each House²⁶.

A Minister of the Crown may give notice in writing to the Parliamentary Commissioner, with respect to any document or information or any class of documents or information specified in the notice, that in the opinion of the minister disclosure would be prejudicial to the safety of the state or otherwise contrary to the public interest²⁷. Where such a notice is given nothing in the Parliamentary Commissioner Act 1967 is taken to authorise or require the Parliamentary Commissioner or any of his officers to communicate to any person or for any purpose any document or information (or class thereof) specified in the notice²⁸. No obligation, however, to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in Her Majesty's service applies to the disclosure of information for the

purposes of an investigation by the Parliamentary Commissioner²⁹; and the Crown is not entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings³⁰.

Where, at any stage in the course of conducting an investigation, the Parliamentary Commissioner forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation by a local commissioner for administration³¹, the Welsh Administration Ombudsman³² the Health Service Commissioner for England, Wales or Scotland³³, he must consult with the appropriate local commissioner about the complaint and, if he considers it necessary, inform the person initiating the complaint of the steps necessary to initiate a complaint to the appropriate local commissioner or Health Service Commissioner³⁴. Where the Parliamentary Commissioner consults with a local commissioner or Health Service Commissioner or the Welsh Administration Ombudsman in relation to a complaint, he may consult him about any matter relating to the complaint, including the conduct of any investigation into the complaint and the form, content and publication of any report of the results of such an investigation³⁵.

1 See the Parliamentary Commissioner Act 1967 s 6(1), (1A) (s 6(1) amended by and s 6(1A) added by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 Pt I para 39(1), (4)). For the excepted authorities see para 41 ante.

2 For the meaning of 'person aggrieved' see para 41 note 8 ante.

3 Parliamentary Commissioner Act 1967 s 6(2). If the person aggrieved has died or is unable to act for himself, the complaint may be made by his personal representative or by a member of his family or other individual suitable to represent him: s 6(2).

4 If the person aggrieved is dead, he must have been so resident at the time of his death: *ibid* s 6(4). For the meaning of 'United Kingdom' see para 14 note 19 ante.

5 *Ibid* s 6(4). The off-shore installations are those in designated areas within the meaning of the Continental Shelf Act 1964 (see FUEL AND ENERGY): Parliamentary Commissioner Act 1967 s 6(4) (amended by the Parliamentary Commissioner (Consular Complaints) Act 1981 s 1).

6 *Ie* under the Immigration Act 1971 s 2 (as substituted and amended): see BRITISH NATIONALITY AND IMMIGRATION vol 4(2) (2002 Reissue) para 14.

7 Parliamentary Commissioner Act 1967 s 6(5) (added by the Parliamentary Commissioner (Consular Complaints) Act 1981 s 1).

8 Parliamentary Commissioner Act 1967 s 6(3). See *R v Local Comr for Administration for the North and East Area of England, ex p Bradford Metropolitan City Council* [1979] QB 287, [1979] 2 All ER 881, CA (special circumstance that the complainant had no-one to give her advice and did not understand the law).

9 Parliamentary Commissioner Act 1967 s 5(5). See the *First Report of the Parliamentary Commissioner for Administration* (HC Paper (1967-68) no 6) para 22, App II, for a 'screen' of ten jurisdictional tests under the Parliamentary Commissioner Act 1967. The Parliamentary Commissioner's decision is subject to judicial review: see *R v Local Comr for Administration for the North and East Area of England, ex p Bradford Metropolitan City Council* [1979] QB 287, [1979] 2 All ER 881, CA; *R v Parliamentary Comr for Administration, ex p Balchin* [1998] 1 PLR 1, [1997] JPL 917; *R v Parliamentary Comr for Administration, ex p Balchin* (1999) 2 LGLR 87; and para 46 note 20 post. As to judicial review see para 58 et seq post.

10 Parliamentary Commissioner Act 1967 s 7(1).

11 *Ibid* s 7(2).

12 *Ibid* s 7(2).

13 *Ie* sums in respect of expenses properly incurred and allowances to compensate for loss of time, in accordance with scales and conditions determined by the Treasury: *ibid* s 7(3). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

14 *Ibid* s 7(3).

15 Ibid s 7(4). Where, however, the person aggrieved has been removed from the United Kingdom under any Order in force under the Aliens Restriction Acts 1914 and 1919 or under the Commonwealth Immigrants Act 1962 he must, if the Parliamentary Commissioner so directs, be permitted to re-enter and remain in the United Kingdom, subject to such conditions as the Secretary of State may direct, for the purposes of the investigation: Parliamentary Commissioner Act 1967 s 7(4).

16 Ibid ss 8(1), 4(1) (substituted by the Parliamentary and Health Service Commissioners Act 1987 s 1(1)).

17 Parliamentary Commissioner Act 1967 ss 8(2), 12(1). See further the text and note 30 infra.

18 As to contempt of court see CONTEMPT OF COURT.

19 Parliamentary Commissioner Act 1967 s 9(1).

20 Ibid s 9(2). Nothing in s 9 is to be construed as applying to the taking of any such action as is mentioned in s 7(4) (see the text and note 15 supra): s 9(3).

21 Or, if he is no longer a member of the House, to such member of the House as the Commissioner thinks appropriate: ibid s 10(1).

22 Ibid s 10(1). Absolute privilege in the law of defamation applies to such statements: s 10(5)(b). As to such privilege see LIBEL AND SLANDER vol 28 (Reissue) para 94 et seq.

23 See note 21 supra.

24 Parliamentary Commissioner Act 1967 s 10(1), (2). Absolute privilege in the law of defamation applies to the publication of any matter by the Commissioner or his officers in communicating with the relevant member of the House of Commons for the purposes of the Parliamentary Commissioner Act 1967: s 10(5)(b), (d).

25 Ibid s 10(3). Absolute privilege in the law of defamation applies to the publication of any matter in such reports: s 10(5)(a). Absolute privilege also applies to the publication by a member of the House of Commons to the person who made the complaint of a report or statement sent to the member: s 10(5)(c).

26 Ibid s 10(4). Absolute privilege in the law of defamation applies to the publication of any matter in such reports: s 10(5)(a).

27 Ibid s 11(3). A Minister of the Crown in this context includes the Commissioners of Customs and Excise and the Commissioners of Inland Revenue: s 11(4).

28 Ibid s 11(3).

29 Ibid s 8(3). This applies to any obligation or restriction whether imposed by any enactment or by any rule of law: s 8(3).

30 Ibid s 8(3). No person is, however, required to furnish any information or answer any questions relating to proceedings of the cabinet or of any committee of the cabinet or to produce so much of any document as relates to such proceedings; and conclusive certification that this exception applies is made by the secretary of the cabinet with the approval of the Prime Minister: s 8(4). Subject to s 8(3), no person can be compelled for the purposes of an investigation to give evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the High Court: ss 8(5), 12(1) (s 8(5) amended by the Civil Evidence Act 1968 s 17(1)(b)).

31 Is established under the Local Government Act 1974 Pt III (ss 23-34) (as amended): see paras 46-49 post.

32 Is in accordance with the Government of Wales Act 1998: see CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the duty imposed on the Welsh Administration Ombudsman to consult with the Parliamentary Commissioner by the Government of Wales Act 1998 s 111, Sch 9 para 27 see para 45 post.

33 See para 54 post.

34 Local Government Act 1974 s 33(3) (amended by the Health Service Commissioners Act 1993 s 20, Sch 2 para 4, Sch 3); Parliamentary Commissioner Act 1967 s 11A(1) (s 11A added by the Parliamentary and Health Service Commissioners Act 1987 s 4(2); Parliamentary Commissioner Act 1967 s 11A(1) amended by the Health Service Commissioners Act 1993 s 20(1), Sch 2 para 1; and the Government of Wales Act 1998 s 125, Sch 12 para 8(2)). For the steps necessary to initiate a complaint to a local commissioner for administration see paras

46-49 post. For the steps necessary to initiate a complaint to the Health Service Commissioner see para 54 post.

35 Local Government Act 1974 s 33(4) (amended by the Health Service Commissioners Act 1993 Sch 2 para 4, Sch 3); Parliamentary Commissioner Act 1967 s 11A(2) (as added: see note 34 supra).

UPDATE

44 Procedure and evidence

TEXT AND NOTE 10--Where the Parliamentary Commissioner proposes to conduct an investigation pursuant to a complaint under the Parliamentary Commissioner Act 1967 s 5(1A) (see PARA 41), he must give the person to whom the complaint relates an opportunity to comment on any allegations contained in the complaint: s 7(1A) (added by Domestic Violence, Crime and Victims Act 2004 Sch 7 para 3(3)). For the purposes of an investigation pursuant to such a complaint, the Parliamentary Commissioner may require any person who in his opinion is able to furnish information or produce documents relevant to the investigation to furnish any such information or produce any such document: 1967 Act s 8(1A) (added by 2004 Act Sch 7 para 4(3)).

TEXT AND NOTE 24--In any case where the Commissioner conducts an investigation pursuant to a complaint under the 1967 Act s 5(1A), he must also send a report of the results of the investigation to the person to whom the complaint relates: s 10(2A) (added by 2004 Act Sch 7 para 5(3)).

TEXT AND NOTE 25--If, after conducting an investigation pursuant to such a complaint, it appears to the Parliamentary Commissioner that (1) the person to whom the complaint relates has failed to perform a relevant duty (see PARA 41) owed by him to the person aggrieved; and (2) the failure has not been or will not be remedied, the Parliamentary Commissioner may, if he thinks fit, lay before each House of Parliament a special report on the case: 1967 Act ss 10(3A), (3B), 12(1)(b) (s 10(3A), (3B) added, s 12(1) substituted, by 2004 Act Sch 7 paras 5(5), 6).

TEXT AND NOTES 31-34--1967 Act s 11A(1), (2) amended: Public Services Ombudsman (Wales) Act 2005 Sch 6 para 5.

NOTES 34, 35--If at any stage in the course of conducting an investigation under the 1967 Act, the Parliamentary Commissioner forms the opinion that the complaint relates partly to a matter within the jurisdiction of (1) the Health Service Commissioner for England, (2) a local commissioner, or (3) both, he may, subject to obtaining the consent of the person aggrieved or any person acting on his behalf, conduct an investigation jointly with that commissioner or those commissioners: s 11ZAA (added by SI 2007/1889; and amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 para 13(4), Sch 18 Pt 14). If at any stage in the course of conducting an investigation under the 1974 Act, a local commissioner forms the opinion that the matters which are the subject of the investigation include a matter within the jurisdiction of (a) the Parliamentary Commissioner, (b) the Health Service Commissioner for England, or (c) both, he may, subject to obtaining the consent of the person affected or the complainant (if any), conduct an investigation jointly with that commissioner or those commissioners; 1974 Act s 33ZA (added by SI 2007/1889; and amended by the Local Government and Public Involvement in Health Act 2007 Sch 12 para 9, Sch 18 Pt 14).

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(3) THE WELSH ADMINISTRATION OMBUDSMAN

45. The Welsh Administration Ombudsman.

The office of Welsh Administration Ombudsman (or Ombudsman Gweinyddiaeth Cymru) was established by the Government of Wales Act 1998¹. The Ombudsman is appointed by Her Majesty², is a corporation sole, and holds office under and exercises functions on behalf of the Crown³. Where the office is vacant, an acting Welsh Administration Ombudsman may be appointed⁴.

The bodies⁵ subject to investigation by the Ombudsman are: the National Assembly for Wales⁶; the Arts Council of Wales; the Care Council for Wales; the Countryside Council for Wales; the Environment Agency⁷; the Forestry Commissioners; the Office of Her Majesty's Chief Inspector of Education and Training in Wales (or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru); the Sports Council for Wales; urban development corporations established for urban development areas wholly in Wales⁸; the Wales Tourist Board; the Welsh Development Agency; and the Welsh Language Board⁹.

The Ombudsman may investigate any action¹⁰ taken by or on behalf of a body subject to investigation by him if the action was taken in the exercise of administrative functions of that body¹¹, and a written complaint is duly made to him¹² by or on behalf of a person ('the person aggrieved') who claims to have sustained injustice in consequence of maladministration in connection with the action¹³. The Ombudsman may not conduct an investigation in respect of any action in respect of which the person aggrieved has or had (1) a right of appeal, reference or review to or before a tribunal constituted under any enactment or by virtue of Her Majesty's prerogative, or (2) a remedy by way of proceedings in any court of law, unless he is satisfied that, in the particular circumstances, it is not reasonable to expect the person aggrieved to resort or have resorted to it¹⁴. Neither may he conduct an investigation in respect of any action if the person aggrieved has or had the opportunity to make a complaint under a procedure operated by the body in the exercise of whose functions the action was taken unless he is satisfied that the procedure has been invoked and exhausted, or that, in the particular circumstances, it is not reasonable to expect the procedure to be or have been invoked or exhausted¹⁵. He must not conduct an investigation in respect of: (a) action taken by or with the authority of a body for the purposes of investigating crime; (b) the commencement or conduct of any civil or criminal proceedings before any court of law in the United Kingdom¹⁶; (c) action which could be investigated under the Health Service Commissioners Act 1993¹⁷; (d) action taken by any member of the administrative staff of a relevant tribunal so far as taken at the direction, or on the authority (whether express or implied), of any person acting in his capacity as a member of the tribunal; (e) action taken in matters relating to contractual or other commercial transactions, other than compulsory land transactions¹⁸; or (f) action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters in relation to relevant service¹⁹. In determining whether to initiate, continue or discontinue an investigation, the Ombudsman must act in accordance with his own discretion, but may not question the merits of a decision taken without maladministration in the exercise of a discretion²⁰.

A complaint may be made to the Ombudsman by any individual or body of persons (whether or not incorporated) except (i) the National Assembly for Wales; (ii) a local authority or other authority or body constituted for purposes of the public service or of local government; (iii) a body constituted for the purposes of carrying on under national ownership an industry or undertaking or part of an industry or undertaking; and (iv) any other authority or body whose

members are appointed by Her Majesty, any Minister of the Crown or government department or the Assembly or whose revenues consist wholly or mainly of money provided by Parliament or the Assembly²¹. A complaint may generally not be entertained unless made by the person aggrieved himself²², nor may it be entertained unless it is made not later than 12 months after the day on which the person aggrieved first had notice of the matters alleged in the complaint; but the Ombudsman may conduct an investigation pursuant to a complaint not made within that period if he considers that there are special circumstances which make it proper to do so²³. A body subject to investigation may itself refer a complaint in certain circumstances²⁴. Any question whether a complaint is duly made or referred to the Ombudsman is determined by him; but a complaint duly referred to him is deemed to be duly made to him²⁵.

Where the Ombudsman proposes to conduct an investigation pursuant to a complaint made to him, he must afford to the body concerned, and any person who is alleged in the complaint to have taken or authorised the action complained of, an opportunity to comment on any allegations contained in the complaint²⁶.

The investigation must be conducted in private, but in other respects the procedure is such as the Ombudsman considers appropriate in the circumstances of the case²⁷. The conduct of an investigation does not affect any action taken, or any power or duty to take further action with respect to any matters subject to the investigation²⁸.

For the purposes of an investigation, the Ombudsman may require any member of, or any officer or member of the staff of, the body concerned, or any other person who in his opinion is able to supply information or produce documents relevant to the investigation, to supply such information or produce such documents²⁹. He has the same powers as the High Court in respect of the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad), and the production of documents³⁰.

The Ombudsman may certify an offence to the High Court where a person, without lawful excuse, obstructs him or any member of his staff in the performance of his functions, or a person is guilty of any act or omission in relation to an investigation which, if that investigation were proceedings in the High Court, would constitute contempt of court³¹.

Where the Ombudsman has conducted an investigation pursuant to a complaint made to him, he must prepare a report of the results and send copies of it to: (A) the person who made the complaint; (B) any member of the National Assembly for Wales who, to the Ombudsman's knowledge, assisted that person in making the complaint (or, if he is no longer an Assembly member, such Assembly member as the Ombudsman thinks appropriate); (C) the body concerned; (D) any person alleged in the complaint to have taken or authorised the action complained of; and (E) the Assembly First Secretary³². Where the Ombudsman decides not to conduct an investigation, he must prepare a statement of his reasons for not doing so, and must send copies of it to the persons mentioned in heads (A) and (B) above³³. For the purposes of the law of defamation, the publication of any matters in a report or in communications in connection with a complaint to the Ombudsman is absolutely privileged³⁴.

Where the Ombudsman, at any stage in the course of conducting an investigation, forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation by the Parliamentary Commissioner for Administration³⁵, a Health Service Commissioner³⁶, or a local commissioner³⁷, he must consult about the complaint with the appropriate Commissioner and, if he considers it necessary, inform the person who made the complaint of the steps necessary to make a complaint to that Commissioner³⁸.

Any function of the Ombudsman may be exercised by a member of his staff, a member of the staff of the Health Service Commissioner for Wales, or an officer of the Parliamentary Commissioner for Administration or of either of the other Health Service Commissioners, if authorised by the Ombudsman for that purpose³⁹. However, no arrangements may be made for any of the functions of the Ombudsman or of the National Assembly for Wales to be exercised

by the other or by a member of the other's staff, or for the provision of any administrative, professional or technical services by the Ombudsman or the Assembly for the other⁴⁰.

The Ombudsman must annually prepare and lay before the Assembly a general report on the performance of his functions, and may from time to time prepare and lay before the Assembly such other reports with respect to his functions as he thinks fit⁴¹. For each financial year after the first financial year of the Assembly, the Ombudsman must prepare, and submit to the executive committee⁴², an estimate of the income and expenses of his office⁴³.

The Ombudsman must keep proper accounting records, and prepare accounts and submit them to the Auditor General for Wales⁴⁴. The Ombudsman is the accounting officer for his office, with responsibilities specified from time to time by the Treasury⁴⁵. The Auditor General for Wales may carry out examinations into the economy, efficiency and effectiveness with which the Ombudsman has used the resources of his office in discharging his functions, but is not entitled to question the merits of the policy objectives of the Ombudsman⁴⁶.

1 Government of Wales Act 1998 s 111(1).

2 Ibid s 111(2), Sch 9 para 1(1). As to the term of office of the Ombudsman, and the removal of a person from office on grounds of incapacity see Sch 9 para 1(2)-(4). Provision is made for the remuneration of the Ombudsman: see Sch 9 para 4(1), (3)-(5). If a person is both Parliamentary Commissioner for Administration and Welsh Administration Ombudsman, he is not entitled to a salary for the latter office: Sch 9 para 4(2). As to the Parliamentary Commissioner for Administration see paras 41-44 ante.

3 Ibid Sch 9 para 2(1), (2). As to the staff, advisers and expenses of the Ombudsman see Sch 9 paras 5, 7. He must include among his staff such persons having a command of the Welsh language as he considers are needed to enable him to investigate complaints in Welsh: Sch 9 para 5(2). He is not a member of the Home Civil Service, but is a Crown servant for the purposes of the Official Secrets Act 1989: Government of Wales Act 1998 Sch 9 para 2(3). See further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 483 et seq.

4 See ibid Sch 9 para 3.

5 References to a body include an unincorporated body (as well as a body corporate); and references to a body subject to investigation by the Ombudsman are to be construed accordingly: ibid Sch 9 para 14(4).

6 As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

7 In the case of the Environment Agency no investigation may be conducted by the Ombudsman in respect of action in connection with the exercise of its flood defence functions (within the meaning of the Water Resources Act 1991 (see WATER AND WATERWAYS vol 101 (2009) PARAS 573-574): Government of Wales Act 1998 Sch 9 para 15(1) note 2. Subject to exceptions, the Assembly may by order add, omit or amend any notes to Sch 9 para 15(1): Sch 9 paras 15(2), 16(4)-(6).

8 In the case of an urban development corporation no investigation may be conducted by the Ombudsman in respect of action in connection with the exercise of its functions in relation to town and country planning: ibid Sch 9 para 15(1) note 3. See also note 7 supra.

9 Ibid Sch 9 para 14(1), (2) (amended by the Care Standards Act 2000 s 54(6), Sch 1 para 27(c); and the Learning and Skills Act 2000 s 73(1), (3)(a)). The Assembly may, subject to exceptions, by order amend this list by adding or omitting, or altering the description of, any body: see the Government of Wales Act 1998 Sch 9 paras 14(3), 16(1)-(3). In the case of a body which has functions exercisable otherwise than in relation to Wales (as well as in relation to Wales or a part of Wales) no investigation may be conducted by the Ombudsman in respect of action in connection with the exercise of the body's functions otherwise than in relation to Wales: Sch 9 para 15(1) note 1, (3). See also note 7 supra. References to action taken in the exercise of functions of a body subject to investigation by the Ombudsman include action taken in the exercise of any functions of any of its members, or any of its officers or members of its staff: Sch 9 para 14(5).

10 'Action' includes failure to act: ibid Sch 9 para 17(10).

11 Administrative functions exercisable by any person appointed as a member of the administrative staff of a relevant tribunal by a body subject to investigation by the Ombudsman, or with the consent (whether as to remuneration and other terms and conditions of service or otherwise) of such a body, are taken to be administrative functions of the body: ibid Sch 9 para 17(2). 'Relevant tribunal' means a tribunal specified by order made by the Secretary of State: Sch 9 para 17(9). As to the Secretary of State see para 13 note 11 ante.

12 le in accordance with *ibid* Sch 9 para 18: see the text and notes 21-25 *infra*.

13 *Ibid* Sch 9 para 17(1).

14 *Ibid* Sch 9 para 17(3).

15 *Ibid* Sch 9 para 17(4).

16 For the meaning of 'United Kingdom' see para 14 note 19 *ante*.

17 See para 54 *post*.

18 'Compulsory land transactions' means transactions for or relating to: (1) the acquisition of land compulsorily or in circumstances in which it could be acquired compulsorily; or (2) the disposal as surplus of land acquired compulsorily or in such circumstances: Government of Wales Act 1998 Sch 9 para 17(6). See also note 19 *infra*. As to compulsory acquisition of land see further COMPULSORY ACQUISITION OF LAND.

19 *Ibid* Sch 9 para 17(5). 'Relevant service' means service (1) in any office or employment under the Crown or under any body subject to investigation by the Ombudsman; or (2) in any office or employment, or under any contract for services, in respect of which power to take action, or to determine or approve the action to be taken, in personnel matters is vested in Her Majesty or any such body: Sch 9 para 17(6). The National Assembly for Wales may by order amend Sch 9 para 17(5), (6) so as to exclude any actions or matters from the provisions of Sch 9 para 17(5): Sch 9 para 17(7).

20 *Ibid* Sch 9 para 17(8).

21 *Ibid* Sch 9 para 18(1).

22 *Ibid* Sch 9 para 18(2). However, where an individual by whom a complaint might have been made has died, or is for any reason unable to act for himself, the complaint may be made by his personal representatives, a member of his family, or another individual, or any body, suitable to represent him: Sch 9 para 18(3). Where a body by whom a complaint might have been made is for any reason unable to act for itself, the complaint may be made by an individual, or another body, suitable to represent it: Sch 9 para 18(4).

23 *Ibid* Sch 9 para 18(5).

24 *Ibid* Sch 9 para 18(6). However, a body subject to investigation may not refer a complaint more than 12 months after the day on which it received the complaint: Sch 9 para 18(7).

25 *Ibid* Sch 9 para 18(8). As to the transfer to the Ombudsman of complaints made to the Parliamentary Commissioner for Administration before 1 July 1999 see the Government of Wales Act (Complaints of Maladministration) (Transitional and Savings Provisions) Order 1999, SI 1999/1791.

26 Government of Wales Act 1998 Sch 9 para 19(1).

27 *Ibid* Sch 9 para 19(2). In particular, the Ombudsman may obtain information from such persons and in such manner, and make such inquiries, as he thinks fit, and may determine whether any person may be represented, by counsel or solicitor or otherwise, in the investigation: Sch 9 para 19(2). The Ombudsman may, if he thinks fit, pay expenses and allowances to the complainant and any other person who attends or supplies information for the purposes of an investigation: Sch 9 para 19(3).

Information obtained by the Ombudsman or a member of his staff in the course of or for the purposes of an investigation may not be disclosed except: (1) for the purposes of the investigation and of any report of it; (2) for the purpose of any proceedings for (a) an offence under the Official Secrets Acts 1911 to 1989 (see CRIMINAL LAW, EVIDENCE AND PROCEDURE VOL 11(1) (2006 Reissue) para 478 *et seq*) alleged to have been committed in respect of information obtained by him or a member of his staff, or (b) an offence of perjury alleged to have been committed in the course of an investigation by him; (3) for the purposes of an inquiry with a view to the taking of proceedings within head (2) *supra*; (4) for the purposes of any proceedings under the Government of Wales Act 1998 Sch 9 para 21 (see the text and note 31 *infra*); or (5) in accordance with Sch 9 para 26 (see *infra*): Sch 9 para 25(1). Schedule 9 para 25(1) does not apply in relation to the disclosure of information in the course of consultations or other co-operation between the Ombudsman and other specified commissioners: Sch 9 para 27(4). Neither the Ombudsman nor any members of his staff may be called upon to give evidence in any proceedings (other than proceedings referred to in heads (1)-(5) *supra*) of matters coming to his or their knowledge in the course of an investigation: Sch 9 para 25(2). A Minister of the Crown may give notice in writing to the Ombudsman that disclosure of any document or information specified in the notice, or any class of document or information so specified, would be prejudicial to the safety of the State or otherwise contrary to the public interest, and where such notice is given neither the Ombudsman nor any member of his staff may be required or authorised to disclose to any person or for any purpose any such document or information: Sch 9 para 25(3), (4).

As to information obtained from and disclosed to the Information Commissioner see Sch 9 paras 25(5), 28 (both added by the Freedom of Information Act 2000 s 76(2), Sch 7 paras 7, 8). As to the Information Commissioner see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) para 518 et seq.

As to the position where the Ombudsman has obtained information in his office as a Parliamentary Commissioner or Health Service Commissioner see the Government of Wales Act 1998 Sch 9 para 26. As to the Health Service Commissioners see para 54 post.

28 Ibid Sch 9 para 19(4).

29 Ibid Sch 9 para 20(1).

30 Ibid Sch 9 para 20(2). No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or supplied to persons in Her Majesty's service, whether imposed by any enactment or by any rule of law, applies to the disclosure of information for the purposes of an investigation by the Ombudsman: Sch 9 para 20(3). The Crown is not entitled to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings, but, subject to that, no person may be compelled to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the High Court: Sch 9 para 20(4), (5).

31 Ibid Sch 9 para 21(1). Where an offence is so certified the High Court may inquire into the matter; and after hearing any witnesses who may be produced against or on behalf of the person charged with the offence, and any statement that may be offered in defence, the High Court may deal with the person charged with the offence in any manner in which it could deal with him if he had committed the same offence in relation to the High Court: Sch 9 para 21(2). Nothing in Sch 9 para 21 is to be construed as applying to the taking of any such action as is mentioned in Sch 9 para 19(4) (see the text and note 28 supra). As to contempt of court see CONTEMPT OF COURT.

32 Ibid Sch 9 para 22(1). As to the action to be taken in response to reports see Sch 9 para 23. As to the Assembly First Secretary see CONSTITUTIONAL LAW AND HUMAN RIGHTS. Apart from identifying any body investigated, a report or further report may not mention the name of any person, or include any particulars which in the Ombudsman's opinion are likely to identify any person and can be omitted without impairing the effectiveness of the report or further report, unless, after taking account of the public interest (as well as the interests of any person who made a complaint and other persons), the Ombudsman considers it necessary for the report or further report to mention his name or include such particulars: Sch 9 para 24(1).

33 Ibid Sch 9 para 22(2).

34 See ibid Sch 9 para 24(2).

35 Ie under the Parliamentary Commissioner Act 1967: see paras 41-44 ante.

36 Ie under the Health Service Commissioners Act 1993: see para 54 post.

37 Ie under the Local Government Act 1974 Pt III (ss 23-34) (as amended): see paras 46-49 post.

38 Government of Wales Act 1998 Sch 9 para 27(1). Where the Ombudsman so consults with a Commissioner, the consultations may extend to any matter relating to the complaint, including the conduct of any investigation pursuant to the complaint, and the form, content and publication of any report of such an investigation: Sch 9 para 27(2). Where a body subject to investigation by the Welsh Administration Ombudsman is also an authority to which the Parliamentary Commissioner Act 1967 applies, a body subject to investigation by a Health Service Commissioner under the Health Service Commissioners Act 1993 or an authority to which the Local Government Act 1974 Pt III (as amended) applies, the Ombudsman and the commissioner concerned must co-operate with each other to any such extent as appears appropriate when exercising any function in relation to the body: Government of Wales Act 1998 Sch 9 para 27(3).

39 Ibid Sch 9 para 5(5).

40 Ibid Sch 9 para 5(8).

41 Ibid Sch 9 para 6(1). The Assembly must, and the Ombudsman may, publish such reports: Sch 9 para 6(2).

42 As to the executive committee see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

43 Government of Wales Act 1998 Sch 9 para 8(1). The estimate must be submitted at least five months before the beginning of the financial year to which it relates: Sch 9 para 8(2). The executive committee must examine the estimate and lay it before the Assembly, with or without modifications: Sch 9 para 8(3), (4).

44 Ibid Sch 9 paras 9, 10 (amended by the Government Resources and Accounts Act 2000 s 29(1), Sch 1 paras 21, 23(d)). As to the Auditor General for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS. In particular, the Auditor General for Wales must satisfy himself that the expenditure to which the accounts relate has been incurred lawfully and in accordance with the authority which governs it: Government of Wales Act 1998 Sch 9 para 10(3). The Auditor General for Wales must examine the accounts, and lay a certified copy of them before the Assembly: Sch 9 para 10(2).

45 See ibid Sch 9 para 11.

46 See ibid Sch 9 para 12; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. For the purpose of enabling him to carry out examinations into, and report to Parliament on, the finances of the Ombudsman, the Comptroller and Auditor General has a right of access to all documents he reasonably requires and is entitled to all necessary assistance and information: Sch 9 para 13. As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 724-726.

UPDATE

45-49 The Welsh Administration Ombudsman, The Commissions for Local Authorities

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

45 The Welsh Administration Ombudsman

TEXT AND NOTES--Government of Wales Act 1998 Sch 9 repealed: Public Services Ombudsman (Wales) Act 2005 Sch 6 para 69, Sch 7. The office of Welsh Administration Ombudsman is abolished: s 36(2). Provision is made for the transfer of staff, property, rights and liabilities from the Welsh Administration Ombudsman to the Public Services Ombudsman for Wales (see PARA 49A): see s 37, Sch 5.

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see PARA 196A.

NOTE 25--SI 1999/1791 revoked: SI 2006/362.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/3. NON-JUDICIAL REDRESS IN RESPECT OF ADMINISTRATIVE ACTION/(4) THE COMMISSIONERS FOR LOCAL ADMINISTRATION/46. Investigation of complaints.

(4) THE COMMISSIONERS FOR LOCAL ADMINISTRATION

46. Investigation of complaints.

A local commissioner¹ may investigate, on complaint being made to him, administrative actions² taken by or on behalf of local authorities or certain similar bodies³, other than those actions he is expressly precluded from investigating⁴. An investigation may take place in any case where a written complaint is made by or on behalf of a member of the public who claims to have sustained injustice in consequence of maladministration⁵ in connection with administrative action and the complaint is either:

- (1) made in writing to the local commissioner specifying the action alleged to constitute maladministration⁶; or
- (2) made in writing to a member⁷ of the authority in question, or of any other authority concerned, specifying the action alleged to constitute maladministration⁸ and is referred to the local commissioner, with the consent of the person aggrieved⁹ or of a person acting on his behalf, by that member or by any other person who is a member of any authority concerned, with a request to investigate the complaint¹⁰.

If, however, the local commissioner is satisfied that any member of any authority concerned has been requested to refer the complaint to a local commissioner and has not done so, he may dispense with the requirement for such a reference¹¹. Before proceeding to investigate a complaint, a local commissioner must satisfy himself that the complaint has been brought, by or on behalf of the person aggrieved, to the notice of the authority to which the complaint relates and that the authority has been afforded a reasonable opportunity to investigate, and reply to, the complaint¹².

A local commissioner must not investigate any action in respect of which the person aggrieved has or had a right of appeal to a Minister of the Crown or the National Assembly for Wales¹³ or a right of appeal, reference or review to or before a tribunal¹⁴ constituted by or under any enactment¹⁵ or has or had a remedy by way of proceedings in any court of law¹⁶, unless he is satisfied that in the particular circumstances it is not reasonable to expect the aggrieved person to resort or to have resorted to that right or remedy¹⁷. Further, a local commissioner must not conduct an investigation in respect of any action which in his opinion affects all or most inhabitants of the area of the authority concerned¹⁸. He is not authorised or required to question the merits of a discretionary decision taken without maladministration by an authority¹⁹. Subject to the foregoing restrictions, the local commissioner acts in accordance with his own discretion in determining whether to initiate, continue or discontinue an investigation, and any question whether a complaint is duly made is to be determined by the local commissioner²⁰.

The matters which are expressly excluded from investigation by the local commissioner²¹ are:

- (a) the commencement or conduct of civil or criminal proceedings before any court of law²²;
- (b) action taken by any police authority in connection with the investigation or prevention of crime²³;
- (c) action taken in matters relating to contractual or other commercial transactions of any authority, including all transactions of an authority relating to the operation of public passenger transport, the carrying on of a dock or harbour undertaking, the provision of entertainment, or the provision or operation of industrial establishments or of markets other than transactions relating to the grant, renewal or revocation of a licence to occupy a pitch or stall in a fair or market, or the attachment of any condition to such a licence, but not including transactions for or relating to the acquisition or disposal of land or the provision of moorings (not being moorings provided in connection with a dock or harbour undertaking) or transactional discharge of functions exercisable under any public general Act, other than those required for the procurement of the goods and services necessary to discharge those functions²⁴;
- (d) action taken in respect of appointments or removals, pay, discipline, superannuation or other personnel matters²⁵;
- (e) any action concerning the giving of instruction, whether secular or religious, or conduct, curriculum, internal organisation, management or discipline, whether in any school or other educational establishment maintained by a local education authority²⁶;

- (f) action taken by the Commission for the New Towns or any development corporation established for the purposes of a new town which is not action in connection with functions in relation to housing²⁷; and
- (g) action taken by any urban development corporation²⁸ or the Urban Regeneration Agency which is not action in connection with functions in relation to town and country planning²⁹.

1 See the Local Government Act 1974 s 23(1), (3) (as amended); and para 49 post. See further LOCAL GOVERNMENT vol 69 (2009) PARA 839.

2 Ibid s 26(1). Action includes failure to act: s 34(1). See further para 41 note 2 ante.

3 See ibid s 25(1) (as amended); and para 47 post.

4 See ibid s 26(6) (as amended), (8), Sch 5 (as amended); and the text and note 21 infra. The local commissioner may not investigate a complaint relating to anything done (or any default or alleged default arising) before 1 April 1974: s 26(12). As to the matters excluded from investigation see heads (a)-(g) in the text.

5 Maladministration is not defined in the Local Government Act 1974. See, however, *R v Local Comr for Administration for the North and East Area of England, ex p Bradford Metropolitan City Council* [1979] QB 287, [1979] 2 All ER 881, CA, per Lord Denning MR and Eveleigh LJ, cited in para 41 note 6 ante. Although there is a substantial element of overlap between maladministration and unlawful conduct by councils or officers or councillors in local government, they are not synonymous. Where councillors were season ticket holders and regular attenders of a football club and were considering a planning application from the club, it was maladministration for them not to declare this interest: *R v Local Comr for Administration in North and North-East England, ex p Liverpool City Council* [2001] 1 All ER 462, [2000] LGR 571, CA. The local commissioner was obliged to take account of the National Code of Local Government Conduct, and where this code was less permissive than the law, a breach of the code could amount to maladministration: see the Local Government Act 1974 s 30(3A) (as added; prospectively repealed) (see para 45 note 21 post; and LOCAL GOVERNMENT vol 69 (2009) PARA 860); and *R v Local Comr for Administration in North and North-East England, ex p Liverpool City Council* supra at 470 and 579 per Henry LJ. As to the National Code of Local Government Conduct see further LOCAL GOVERNMENT vol 69 (2009) PARA 230 et seq. Where considerations of party political loyalty are taken into account on an application for planning permission through a system of agreed voting, this can amount to maladministration: *R v Local Comr for Administration in North and North-East England, ex p Liverpool City Council* supra at 479-480 and 589-590 per Chadwick LJ.

6 Local Government Act 1974 s 26(2) (amended by the Local Government Act 1988 s 29, Sch 3 para 5). See also note 9 infra.

7 'Member' means: (1) in relation to the Greater London Authority, the Mayor of London, the Deputy Mayor, or a member of the London Assembly; (2) in relation to a joint board, includes a member of any of the constituent authorities of the joint board; and (3) in relation to a national park authority, includes a member of any of the councils by whom a local authority member of the authority is appointed: Local Government Act 1974 s 34(1) (definition amended by the Environment Act 1995 s 63, Sch 7 para 18(3); and the Greater London Authority Act 1999 s 74(1), (10)). For the purposes of the Local Government Act 1974 s 26 (as amended), references to a member of an authority concerned include, in the case of a complaint relating to a joint authority established by the Local Government Act 1985 Pt IV (ss 23-42) (as amended), references to members of a constituent council of that authority: Local Government Act 1974 s 26(11)(b) (s 26(11) substituted by the Local Government Act 1985 s 84, Sch 14 Pt II para 51(b)).

8 It is not necessary to specify the maladministration. It is sufficient if the complainant specifies the action taken by the authority in connection with which the complaint of maladministration is made: *R v Local Comr for Administration for the North and East Area of England, ex p Bradford Metropolitan City Council* [1979] QB 287 at 313, [1979] 2 All ER 881 at 899, CA, per Lord Denning MR, and at 315 and 900 per Eveleigh LJ.

9 'Person aggrieved' means the person who claims or is alleged to have sustained any such injustice as is mentioned in the Local Government Act 1974 s 26(1): s 34(1). For the purposes of s 26 (as amended), references to a person aggrieved include references to his personal representatives: s 26(11)(a) (as substituted: see note 7 supra).

10 Ibid s 26(2) (as amended: see note 6 supra).

11 Ibid s 26(3).

12 Ibid s 26(5).

13 Ibid s 26(6)(b) (amended by the Government of Wales Act 1998 s 125, Sch 12 para 13). As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

14 'Tribunal' includes the person constituting a tribunal consisting of one person: Local Government Act 1974 s 34(1).

15 Ibid s 26(6)(a).

16 Ibid s 26(6)(c). See *R v Comr for Local Administration, ex p Croydon London Borough Council* [1989] 1 All ER 1033 at 1044, DC, per Woolf LJ (commissioner should exercise discretion as to whether to discontinue his investigation in cases where it becomes clear that the complainant had a remedy in a court of law). See further *R v Local Comr for Administration for the North and East Area of England, ex p Bradford Metropolitan City Council* [1979] QB 287, [1979] 2 All ER 881, CA; *R v Local Comr for Administration in North and North-East England, ex p Liverpool City Council* [2001] 1 All ER 462, [2000] LGR 571, CA.

17 Local Government Act 1974 s 26(6) proviso. For 'a clear case for the application of the proviso' see *R v Local Comr for Administration in North and North-East England, ex p Liverpool City Council* [2001] 1 All ER 462, [2000] LGR 571, CA, where the Court of Appeal considered the evidential difficulties in establishing disputed facts in judicial review proceedings and the modest financial means of the complainants as relevant factors in the commissioner's decision to use the proviso to the Local Government Act 1974 s 26(6).

18 A local commissioner must not conduct an investigation in respect of any action which in his opinion affects all or most of the inhabitants of the following areas: (1) where the complaint relates to a national park authority (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 526 et seq), the area of the park for which it is such an authority; (2) where the complaint relates to the Commission for the New Towns (see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) para 1383 et seq), the area of the new town or towns to which the complaint relates; (3) where the complaint relates to the Urban Regeneration Agency, any designated area within the meaning of the Leasehold Reform, Housing and Urban Development Act 1993 Pt III (ss 158-185) (as amended) (see TOWN AND COUNTRY PLANNING); and (4) in any other case, the area of the authority concerned: Local Government Act 1974 s 26(7) (amended by the Local Government Act 1988 s 29, Sch 3 para 5; the Leasehold Reform, Housing and Urban Development Act 1993 s 187(1), Sch 21 para 6(2); the Environment Act 1995 s 63, Sch 7 para 18(2); and the Government of Wales Act 1998 s 152, Sch 18 Pt IV).

19 Local Government Act 1974 s 34(3). He may, however, question the manner in which the decision is reached. See *R v Local Comr for Administration for the South, the West, the West Midlands, Leicestershire, Lincolnshire and Cambridgeshire, ex p Eastleigh Borough Council* [1988] QB 855, [1988] 3 All ER 151, CA; *R v Local Comr for Administration for the North and East Area of England, ex p Bradford Metropolitan City Council* [1979] QB 287 at 316, [1979] 2 All ER 881 at 901, CA, per Eveleigh LJ; *R v Comr for Local Administration, ex p Croydon London Borough Council* [1989] 1 All ER 1033 at 1043, DC, per Woolf LJ; *R v Local Comr for Administration in North and North-East England, ex p Liverpool City Council* [2001] 1 All ER 462, [2000] LGR 571, CA.

20 Local Government Act 1974 s 26(10). The exercise of this discretion is subject to judicial review: see *R v Local Comr for Administration for the North and East Area of England, ex p Bradford Metropolitan City Council* [1979] QB 287, [1979] 2 All ER 881, CA; *R v Local Comr for Administration for the South, the West, the West Midlands, Leicestershire, Lincolnshire and Cambridgeshire, ex p Eastleigh Borough Council* [1988] QB 855, [1988] 3 All ER 151, CA; *R v Comr for Local Administration, ex p Croydon London Borough Council* [1989] 1 All ER 1033, DC; *R v Local Comr for Administration in North and North-East England, ex p Liverpool City Council* [2001] 1 All ER 462, [2000] LGR 571, CA. See also *Re Fletcher's Application* [1970] 2 All ER 527n, CA. As to judicial review see para 58 et seq post.

The local commissioner may however consult with the Standards Board for England (see paras 50-53 post) where he forms the opinion that the complaint being investigated relates partly to a matter which could be the subject of an investigation by ethical standards officers: see the Local Government Act 2000 s 67(2); and LOCAL GOVERNMENT vol 69 (2009) PARA 266. For the corresponding provision for ethical standards officers to consult with a local commissioner during the course of their investigations see s 67(1); and LOCAL GOVERNMENT vol 69 (2009) PARA 266.

21 Local Government Act 1974 s 26(8), Sch 5 (as amended). Her Majesty may by Order in Council amend Sch 5 so as to add to or exclude from the provisions of that Schedule such actions or matters as may be described in the order; and any such order is subject to annulment in pursuance of a resolution of either House of Parliament: s 26(9) (amended by Local Government Act 1988 s 29, Sch 3 para 5(5)). For Orders in Council made under the Local Government Act 1974 s 26(9) (as amended) see LOCAL GOVERNMENT vol 69 (2009) PARA 851.

22 Ibid Sch 5 para 1.

23 Ibid Sch 5 para 2 (amended by the Local Government Administration (Matters Subject to Investigation) Order 1988, SI 1988/242, art 2).

24 Local Government Act 1974 Sch 5 para 3 (amended by the Local Government Administration (Matters Subject to Investigation) Order 1993, SI 1993/940, art 2).

25 Local Government Act 1974 Sch 5 para 4.

26 Ibid Sch 5 para 5(2) (amended by the Education Reform Act 1988 s 237(1), Sch 12 Pt III para 711).

27 Local Government Act 1974 Sch 5 para 6 (added by the Local Government Act 1988 s 29, Sch 3 para 10; and amended by the Government of Wales Act 1998 s 129, Sch 15 para 3).

28 le established by an order under the Local Government, Planning and Land Act 1980 s 135 (as amended): see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) para 1428.

29 Local Government Act 1974 Sch 5 para 7 (added by the Local Government Act 1988 s 29, Sch 3 para 10), Local Government Act 1974 Sch 5 para 8 (added by the Leasehold Reform, Housing and Urban Development Act 1993 s 187(1), Sch 21 para 6(3)).

UPDATE

45-49 The Welsh Administration Ombudsman, The Commissions for Local Authorities

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

46 Investigation of complaints

TEXT AND NOTES--1974 Act s 26, Sch 5 further amended: Local Government and Public Involvement in Health Act 2007 s 173, Sch 12 paras 3, 12, Sch 18 Pt 14.

1974 Act s 24A (added by 2007 Act s 171) sets out the circumstances in which a local commissioner may investigate a matter.

See also 1974 Act ss 26A-26D (added by 2007 Act s 174(1)) (complaints and matters coming to commissioners' attention). 1974 Act s 26C amended: 2007 Act Sch 13 para 31(3).

NOTE 7--In definition of 'member' heads (2), (3) omitted: 1974 Act s 34(1) (amended by 2007 Act Sch 12 para 10(a), Sch 18 Pt 14).

NOTE 9--Definition of 'person aggrieved' replaced by 'person affected': 1974 Act s 26(11)(a) (substituted by 2007 Act Sch 12 para 10(b)).

TEXT AND NOTE 12--References to a complaint are now to a matter; and the commissioner must alternatively satisfy himself that, in the particular circumstances, it is not reasonable to expect the matter to be brought to the notice of that authority or for that authority to be afforded a reasonable opportunity to investigate the matter and to respond: 1974 Act s 26(5) (amended by 2007 Act Sch 12 para 3(2)(b); and SI 2007/1889).

TEXT AND NOTE 13--Reference to the National Assembly for Wales omitted: 1974 Act s 26(6)(b) (amended by the Public Services Ombudsman (Wales) Act 2005 Sch 6 para 11(2), Sch 7). A Local Commissioner must not conduct an investigation under the 1974 Act Pt 3 (ss 23-34) in respect of any action taken in connection with the discharge by an authority of any of the authority's functions otherwise than in relation to England: s 26(6A) (added by the 2005 Act Sch 6 para 11(3)).

NOTE 18--1974 Act s 26(7) further amended: Housing and Regeneration Act 2008 Sch 8 para 18(3), Sch 16. For transitional provision see SI 2008/3068.

TEXT AND NOTE 26--1974 Act Sch 5 para 5(2) further amended: Apprenticeships, Skills, Children and Learning Act 2009 s 261.

TEXT AND NOTE 29--1974 Act Sch 5 para 8 amended: Housing and Regeneration Act 2008 Sch 8 para 18(4).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/3. NON-JUDICIAL REDRESS IN RESPECT OF ADMINISTRATIVE ACTION/(4) THE COMMISSIONERS FOR LOCAL ADMINISTRATION/47. Authorities subject to investigation.

47. Authorities subject to investigation.

The authorities subject to investigation are as follows¹: any local authority²; the Greater London Authority³; a national park authority⁴; any joint board for the constituent authorities of which are all local authorities⁵; the Commission for the New Towns⁶; any development corporation established for the purposes of a new town⁷; the London Development Agency⁸; any urban development corporation⁹; any housing action trust¹⁰; the Urban Regeneration Agency¹¹; a fire authority constituted by a combination scheme¹²; any joint authority¹³; the London Fire and Emergency Planning Authority¹⁴; any police authority¹⁵; the Service Authority for the National Crime Squad¹⁶; the Metropolitan Police Authority¹⁷; Transport for London¹⁸; in relation to the flood defence functions of the Environment Agency¹⁹, the Environment Agency and any regional flood defence committee²⁰; and the London Transport Users' Committee²¹.

The list of authorities subject to investigation may be expanded to apply to other authorities (subject to any specified modification or exceptions) which are established by or under an Act of Parliament and which have power to levy a rate or issue a precept, by Her Majesty by Order in Council²².

1 Local Government Act 1974 s 25(1) (amended by the Local Government Act 1988 s 29, Sch 3 para 4). The references to an authority include references to: (1) the members and officers of that authority; (2) any person or body or persons acting for the authority under the Local Government Act 1972 s 101 (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 369 et seq); or (3) any committee mentioned in s 101(9) (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 370): Local Government Act 1974 s 25(4) (amended by the Local Government and Housing Act 1989 s 194, Sch 12 Pt II).

Any reference to an authority also includes, in the case of the Greater London Authority, a reference to each of the following: (a) the London Assembly; (b) any committee of the London Assembly; and (c) any body or person exercising functions on behalf of the Greater London Authority: Local Government Act 1974 s 25(4A) (added by the Greater London Authority Act 1999 s 74(1), (3)). See LONDON GOVERNMENT vol 29(2) (Reissue) para 255.

Any reference to an authority also includes, in the case of the London Transport Users' Committee, a reference to a sub-committee of that Committee: Local Government Act 1974 s 25(4B) (added by the Greater London Authority Act 1999 s 247, Sch 18 para 16(1), (3)). See LONDON GOVERNMENT vol 29(2) (Reissue) para 322.

Any reference to an authority also includes a reference to: (i) a school organisation committee constituted in accordance with the School Standards and Framework Act 1998 s 24 (see EDUCATION vol 15(1) (2006 Reissue) para 118); (ii) an exclusion appeals panel constituted in accordance with s 67, Sch 18 (repealed); (iii) an admission appeals panel constituted in accordance with s 94, Sch 24 or s 95, Sch 25 para 3 (repealed); and (iv) the governing body of any community, foundation or voluntary school so far as acting in connection with the admission of pupils to the school or otherwise performing any of their functions under Pt III Ch I (ss 84-98) (see EDUCATION vol 15(1) (2006 Reissue) para 251 et seq): Local Government Act 1974 s 25(5) (substituted by the School Standards and Framework Act 1998 s 140(1), Sch 30 para 4(2)).

2 Local Government Act 1974 s 25(1)(a). 'Local authority' means a county council, a district council, the Broads Authority, a Welsh county council, a county borough council, a London borough council, the Common

Council of the City of London, or the Council of the Isles of Scilly: s 34(1) (definition amended by the Local Government Act 1985 s 102, Sch 17; the Norfolk and Suffolk Broads Act 1988 s 21, Sch 6 para 12; and the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 44).

3 Local Government Act 1974 s 25(1)(aaa) (added by the Greater London Authority Act 1999 s 74(1), (2)). As to the Greater London Authority see LONDON GOVERNMENT vol 29(2) (Reissue) para 79 et seq.

4 Local Government Act 1974 s 25(1)(ab) (added by the Environment Act 1995 s 63, Sch 7 para 18(1)). As to national park authorities see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 526 et seq.

5 Local Government Act 1974 s 25(1)(b). See LOCAL GOVERNMENT vol 69 (2009) PARA 853.

6 Ibid s 25(1)(ba) (added by the Local Government Act 1988 s 29, Sch 3 para 4). See TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) para 1383 et seq. A local commissioner may not investigate a complaint as regards the Commission for the New Towns, any development corporation, or any urban development corporation if and in so far as it is in respect of anything done or any default or alleged default arising before 24 May 1988 (ie the date of the coming into force of the Local Government Act 1988 Sch 3): Local Government Act 1974 s 26(13) (added by the Local Government Act 1988 s 29, Sch 3 para 5(6); and amended by the Government of Wales Act 1998 s 152, Sch 18 Pt IV).

7 Local Government Act 1974 s 25(1)(bb) (added by the Local Government Act 1988 Sch 3 para 4). See also note 6 supra. See TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) para 1322 et seq.

8 Local Government Act 1974 s 25(1)(bbb) (added by the Greater London Authority Act 1999 s 394(1), (2)). See LONDON GOVERNMENT vol 29(2) (Reissue) para 215.

9 Local Government Act 1974 s 25(1)(bd) (added by the Local Government Act 1988 Sch 3 para 4). See also note 6 supra. The text applies to any urban development corporation established by an order under the Local Government, Planning and Land Act 1980 s 135: see TOWN AND COUNTRY PLANNING vol 46(3) (Reissue) para 1428.

10 Local Government Act 1974 s 25(1)(be) (added by the Housing Act 1988 s 140, Sch 17 Pt I). The text applies to any housing action trust established under the Housing Act 1988 Pt III (ss 60-92) (as amended): see HOUSING vol 22 (2006 Reissue) para 319 et seq.

11 Local Government Act 1974 s 25(1)(bf) (added by the Leasehold Reform, Housing and Urban Development Act 1993 s 187(1), Sch 21 para 6(1)). See TOWN AND COUNTRY PLANNING.

12 Local Government Act 1974 s 25(1)(bg) (added by the Local Government Act 2000 s 107, Sch 5 para 14). The combination scheme referred to in the text is under the Fire Services Act 1947: see FIRE SERVICES vol 18(2) (Reissue) para 24 et seq.

13 Local Government Act 1974 s 25(1)(c) (substituted by the Local Government Act 1985 s 84, Sch 14 para 51). Joint authorities are established by the Local Government Act 1985 Pt IV (ss 23-42) (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 47 et seq.

14 Local Government Act 1974 s 25(1)(cza) (added by the Greater London Authority Act 1999 s 394(1), (3)). See FIRE SERVICES vol 18(2) (Reissue) para 17.

15 Local Government Act 1974 s 25(1)(ca) (added by the Local Government Act 1985 Sch 14 para 51; substituted by the Police and Magistrates' Courts Act 1994 s 43, Sch 4 Pt I para 16; and amended by the Police Act 1996 s 103, Sch 7 para 1(2)(j)). The text refers to police authorities established under the Police Act 1996 s 3: see POLICE vol 36(1) (2007 Reissue) para 139.

16 Local Government Act 1974 s 25(1)(caa) (added by the Police Act 1997 s 88, Sch 6 para 11). See POLICE vol 36(1) (2007 Reissue) para 430 et seq.

17 Local Government Act 1974 s 25(1)(caa) (sic) (added by the Greater London Authority Act 1999 s 394(1), (4)). See POLICE vol 36(1) (2007 Reissue) paras 137, 147 et seq.

18 Local Government Act 1974 s 25(1)(cc) (added by the Greater London Authority Act 1999 s 394(1), (5)). See LONDON GOVERNMENT vol 29(2) (Reissue) para 256 et seq.

19 le within the meaning of the Water Resources Act 1991: see WATER AND WATERWAYS vol 101 (2009) PARAS 573-574.

20 Local Government Act 1974 s 25(1)(d) (substituted by the Environment Act 1995 s 120, Sch 22 para 18). See WATER AND WATERWAYS vol 101 (2009) PARA 559 et seq.

21 Local Government Act 1974 s 25(1)(e) (added by the Greater London Authority Act 1999 s 247, Sch 18 para 16(1), (2)(b)). See LONDON GOVERNMENT vol 29(2) (Reissue) para 322 et seq.

22 Local Government Act 1974 s 25(2). Such an order may be varied or revoked by subsequent order and is subject to annulment in pursuance of a resolution of either House of Parliament: s 25(3).

UPDATE

45-49 The Welsh Administration Ombudsman, The Commissions for Local Authorities

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

47 Authorities subject to investigation

TEXT AND NOTES--Local Government Act 1974 s 25 further amended: Local Government and Public Involvement in Health Act 2007 s 172, Sch 18 Pt 14.

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see PARA 196A.

TEXT AND NOTES 1-21--Internal drainage boards (see WATER AND WATERWAYS vol 101 (2009) PARA 569 et seq) are also subject to investigation: Commissions for Local Administration (Extension of Jurisdiction) Order 2004, SI 2004/344.

The following authorities are also subject to investigation: (1) that established for an area in England by an order under the Local Government and Public Involvement in Health Act 2007 s 207 (joint waste authorities); (2) that established under the Local Democracy, Economic Development and Construction Act 2009 s 88 (economic prosperity boards); and (3) that established under the Local Democracy, Economic Development and Construction Act 2009 s 103 (combined authorities): Local Government Act 1974 s 25(1)(cd)-(cf) (added by Local Government and Public Involvement in Health Act 2007 Sch 13 para 31(2); Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 41).

NOTE 1--Heads (i)-(v) now (i) an admission appeal panel constituted by the authority in accordance with regulations under the School Standards and Framework Act 1998 s 94(5) or 95(3); (ii) the governing body of any community, foundation or voluntary school maintained by the authority so far as acting in connection with the admission of pupils to the school or otherwise performing any of its functions under Pt III Ch I (ss 84-98) (see EDUCATION vol 15(1) (2006 Reissue) PARA 251 et seq); and (iii) an exclusion appeal panel constituted by the authority in accordance with regulations under the Education Act 2002 s 52: 1974 Act s 25(5) (amended by 2002 Act Sch 21 para 2, Sch 22 Pt 3; Education and Inspections Act 2006 Sch 3 para 2; and 2007 Act s 172(6)).

NOTE 2--Definition of 'local authority' now refers to a county council in England and reference to a Welsh county council and a county borough council omitted: 1974 Act s 34(1) (amended by Public Services Ombudsman (Wales) Act 2005 Sch 6 para 16(3), Sch 7).

TEXT AND NOTE 4--Now a national park authority for a national park in England: 1974 Act s 25(1)(ab) (amended by 2005 Act Sch 6 para 10(a)).

TEXT AND NOTES 6, 11--1974 Act s 25(1)(ba) repealed, s 25(1)(bf) amended: Housing and Regeneration Act 2008 Sch 8 para 18(2), Sch 16.

NOTE 6--1974 Act s 26(13) repealed: 2007 Act Sch 12 para 3(8), Sch 18 Pt 14.

TEXT AND NOTE 9--Now any urban development corporation for an urban development area in England: 1974 Act s 25(1)(bd) (amended by 2005 Act Sch 6 para 10(b)).

TEXT AND NOTE 10--Now any housing action trust for a designated area in England: 1974 Act s 25(1)(be) (amended by 2005 Act Sch 6 para 10(c)).

TEXT AND NOTE 12--1947 Act repealed: Fire and Rescue Services Act 2004 Sch 2. Reference to a fire authority is now to a fire and rescue authority in England constituted by a scheme under the 2004 Act s 2 or a scheme to which s 4: 1974 Act s 25(1)(bg) (amended by 2004 Act Sch 1 para 42; and 2005 Act Sch 6 para 10(d)).

TEXT AND NOTE 15--1974 Act s 25(1)(ca) further amended: 2005 Act Sch 6 para 10(e).

TEXT AND NOTE 16--Reference to the Service Authority for the National Crime Squad omitted: Criminal Justice and Police Act 2001 Sch 6 para 33, Sch 7 Pt 5(1) (repealing 1974 Act s 25(1)(caa)).

TEXT AND NOTE 20--Now any regional flood defence committee for an area wholly or partly in England: 1974 Act s 25(1)(d) (amended by 2005 Act Sch 6 para 10(f)).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/3. NON-JUDICIAL REDRESS IN RESPECT OF ADMINISTRATIVE ACTION/(4) THE COMMISSIONERS FOR LOCAL ADMINISTRATION/48. Procedure and evidence.

48. Procedure and evidence.

A complaint may be made by any individual or by any body of persons, whether incorporated or not, other than (1) a local authority¹ or other authority or body constituted for the purposes of the public service or of local government including the National Assembly for Wales, or for the purpose of carrying on under national ownership any industry or undertaking or part of an industry or undertaking; or (2) any other authority or body whose members are appointed by Her Majesty or any Minister of the Crown or government department or by the National Assembly for Wales, or whose revenue consists wholly or mainly of money provided by Parliament or the National Assembly for Wales². The complaint must be made by the person aggrieved³ himself unless he has died or is for any reason unable to act for himself⁴. A complaint must be made to the local commissioner or a member of any authority concerned within 12 months from the day on which the person aggrieved first had notice of the matters alleged in the complaint, but a local commissioner may conduct an investigation pursuant to a complaint not made within that period if he considers that it is reasonable to do so⁵. Any question as to whether a complaint has been duly made must be determined by the local commissioner⁶.

Where a local commissioner proposes to conduct an investigation pursuant to a complaint, he must afford to the authority concerned, and to any person who is alleged in the complaint to have taken or authorised the action complained of, an opportunity to comment on any allegations contained in the complaint⁷. Every investigation must be conducted in private but, apart from any provisions in the Local Government Act 1974 itself, the local commissioner may adopt such procedure as he considers appropriate for such investigation⁸. He may obtain information from such persons and in such manner and make such inquiries as he thinks fit and he may also determine whether any person is to be represented, by counsel or solicitor or

otherwise, in the investigation⁹. He is empowered, if he thinks fit, to pay expenses and allowances¹⁰ to the person by whom the complaint was made and to any other person who attends or furnishes information for the purposes of an investigation¹¹. To assist him in any investigation, a local commissioner may obtain advice from any person who in his opinion is qualified to give it¹².

The conduct of an investigation does not affect any action taken by the authority concerned, or any power or duty of that authority to take further action with respect to any matters subject to the investigation¹³.

For the purposes of an investigation a local commissioner may require any member or officer of the authority concerned, or any other person who in his opinion is able to furnish information or produce documents relevant to the investigation, to furnish any such information or produce any such documents¹⁴. He may require any person to furnish information concerning communications between the authority concerned and any government department or the National Assembly for Wales, or to produce any correspondence or other documents forming part of any such written communications¹⁵. He has the same powers as the High Court in respect of the attendance and examination of witnesses and in respect of the production of documents¹⁶. If, without lawful excuse, any person obstructs a local commissioner or any of his officers in the performance of his statutory functions, or is guilty of any act or omission in relation to an investigation which would constitute contempt of court¹⁷ if that investigation were a proceeding in the High Court, the local commissioner may certify the offence to the High Court¹⁸. The High Court proceeds in such cases as if the like offence had been committed in relation to the High Court¹⁹.

In any case where a local commissioner conducts an investigation, or decides not to conduct an investigation, he must send a report of the results of the investigation, or a statement of his reasons for not conducting an investigation, to the person, if any, who made or referred the complaint to the local commissioner, to the complainant, and to the authority concerned, and to any other authority or person who is alleged in the complaint to have taken or authorised the action complained of²⁰. The report may identify the authority or authorities concerned, but it must not mention the name of any person or contain any particulars which, in the opinion of the local commissioner, are likely to identify any person and can be omitted without impairing the effectiveness of the report, unless, after taking into account the public interest as well as the interests of the complainant and of persons other than the complainant, the local commissioner considers it necessary to mention the name of that person or to include in the report any such particulars²¹. For a period of three weeks the authority concerned must make copies of the report available for inspection by the public without charge at all reasonable hours at one or more of their offices; and any person is entitled to take copies of or extracts from the reports when so made available²², unless the local commissioner, after taking into account the public interest as well as the interests of the complainant and of persons other than the complainant, has directed that the report should not be made available to the public²³. Where the report is made available for inspection by the public, the authority concerned must supply a copy of the report to any person on request if he pays such charge as the authority may reasonably require²⁴. If a person having custody of a report made available for inspection by the public obstructs any person seeking to inspect the report, or to make a copy of, or extract from, the report he is guilty of an offence and liable on summary conviction to a fine²⁵.

If in the opinion of the local commissioner, as set out in the report, injustice has been caused to the person aggrieved in consequence of maladministration, the report must be laid before the authority concerned, and it is the duty of that authority to consider the report, and within the period of three months beginning with the date on which it received the report, or such longer period as the local commissioner may agree in writing, to notify the local commissioner of the action which the authority has taken or proposes to take²⁶. If the local commissioner does not receive any such notification within the period allowed, or is not satisfied with the action which the authority concerned has taken or proposes to take, or does not within a period of three

months beginning with the end of the period allowed or such longer period as the local commissioner may agree in writing, receive confirmation from the authority concerned that it has taken action as proposed to the satisfaction of the local commissioner, he must make a further report setting out those facts and making recommendations²⁷. If the local commissioner does not receive the notification required within the period allowed or is satisfied before the period allowed has expired that the authority concerned has decided to take no action, or is not satisfied with the action which the authority concerned has taken or proposes to take, or does not within a period of three months beginning with the end of the period allowed, or such longer period as the local commissioner may agree in writing, receive confirmation from the authority concerned that it has taken action, as proposed, to the satisfaction of the local commissioner, he may, by notice to the authority, require it to arrange for a statement to be published²⁸.

The authority's consideration of such a further report is subject to the restriction that, if it is proposed that the authority should take no action on, or not the action recommended in the further report, consideration of the report must be referred to the authority itself²⁹. If the authority takes into account a report by a person or body with an interest in the local commissioner's further report, it must not conclude its consideration of the local commissioner's report without taking into account a report by a person or body with no such interest³⁰. No member of an authority can vote on any question regarding a report or further report from the local commissioner in which he is named and criticised³¹.

In any case where a report or a further report is laid before an authority and on consideration of the report it appears to the authority that a payment should be made to, or some other benefit should be provided for, a person who has suffered injustice in consequence of maladministration to which the report relates, the authority may incur such expenditure as appears to it to be appropriate in making such a payment or providing such a benefit³².

A Minister of the Crown or any of the authorities which are subject to investigation by a local commissioner³³ may give notice in writing to a local commissioner, with respect to any document or information or any class of documents or information specified in the notice, that in the opinion of the minister, or as the case may be of the authority, disclosure would be contrary to the public interest³⁴. Where such a notice is given, nothing in Part III of the Local Government Act 1974 is taken to authorise or require the local commissioner or any member of the staff of a commission who is allocated to assist him to communicate to any other person or for any purpose any document or information (or class thereof) specified in the notice³⁵. No obligation, however, to maintain secrecy or other restriction upon the disclosure of information obtained by or furnished to persons in Her Majesty's service applies to the disclosure of information for the purposes of an investigation by a local commissioner³⁶; and the Crown is not entitled in relation to any such investigation to any such privilege in respect of the production of documents or the giving of evidence as is allowed by law in legal proceedings³⁷.

Information obtained by a local commissioner, or any officer of either the Commission for Local Administration in England or the Commission for Local Administration in Wales³⁸, in the course of or for the purposes of an investigation must not be disclosed except: (a) for the purposes of the investigation and any report thereon; (b) for the purposes of any proceedings for an offence under the Official Secrets Acts³⁹ alleged to have been committed in respect of information obtained by a local commissioner or by an officer of either commission under the Local Government Act 1974, or for the purposes of any proceedings⁴⁰ for an offence of perjury allegedly committed in the course of an investigation; or (c) for the purpose of any proceedings for obstruction and contempt⁴¹ in relation to the functions of a local commissioner and the officers of either commission⁴². With the same exceptions, a local commissioner or an officer of either commission may not be called to give evidence in any proceedings of matters coming to his knowledge in the course of an investigation⁴³.

Where, at any stage in the course of conducting an investigation, a local commissioner forms the opinion that the complaint relates partly to a matter which could be the subject of an

investigation by the Parliamentary Commissioner⁴⁴ or by an ethical standards officer upon referral from the Standards Board for England⁴⁵ or the Welsh Administration Ombudsman⁴⁶ or by the Health Service Commissioner for England or the Health Service Commissioner for Wales⁴⁷, he must consult about the complaint with him and, if he considers it necessary, inform the person initiating the complaint of the steps necessary to initiate a complaint to the Parliamentary Commissioner, the Welsh Administration Ombudsman, the Standards Board for England or the appropriate Health Service Commissioner as the case may be⁴⁸. Where a local commissioner consults with the Parliamentary Commissioner, the Welsh Administration Ombudsman, an ethical standards officer of the Standards Board for England, or a Health Service Commissioner in relation to a complaint, he may consult him about any matter relating to the complaint, including the conduct of any investigation into the complaint and the form, content and publication of any report of the results of such investigation⁴⁹. Similarly, where at any stage in the course of conducting an investigation, the Parliamentary Commissioner, a Health Service Commissioner⁵⁰, or an ethical standards officer of the Standards Board for England forms the opinion that the complaint relates partly to a matter which could be the subject of an investigation by a local commissioner, he must consult with the appropriate local commissioner about the complaint and, if he considers it necessary, inform the complainant of the steps necessary to initiate a complaint to a local commissioner⁵¹. The scope of the matters subject to consultation is the same as that where the consultation is initiated by a local commissioner⁵².

1 For the meaning of 'local authority' see para 47 note 2 ante.

2 Local Government Act 1974 s 27(1) (amended by the Government of Wales Act 1998 s 125, Sch 12 paras 11, 14). See further LOCAL GOVERNMENT vol 69 (2009) PARA 855. As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 For the meaning of 'person aggrieved' see para 46 note 9 ante.

4 Local Government Act 1974 s 27(2). If the person aggrieved has died or is unable to act for himself, the complaint may be made by his personal representative or by a member of his family or other individual suitable to represent him: s 27(2).

5 Ibid s 26(4) (amended by the Local Government Act 1988 s 29, Sch 3 para 5(3)). For a decision on the unamended wording of s 26(4) see *R v Local Comr for Administration for the North and East Area of England, ex p Bradford Metropolitan City Council* [1979] QB 287, [1979] 2 All ER 881, CA.

6 Local Government Act 1974 s 26(10). This discretion is subject to judicial review: see *R v Local Comr for Administration for the North and East Area of England, ex p Bradford Metropolitan City Council* [1979] QB 287, [1979] 2 All ER 881, CA. As to judicial review see para 58 et seq post.

7 Local Government Act 1974 s 28(1). The publication of any matter in communications between a member or officer of an authority and a local commissioner, or any officer of either commission, is absolutely privileged (if it is for the purposes of the relevant Part of the Local Government Act 1974): s 32(1)(a) (amended by the Local Government Act 1988 Sch 3 para 8).

8 Local Government Act 1974 s 28(2). The publication of any matter by a local commissioner or by an officer of either commission in communication with a complainant for the purposes of Pt III (ss 23-24) (as amended) is absolutely privileged: s 32(1)(b).

9 Ibid s 28(2).

10 The payments must be in accordance with such scales and subject to such conditions as may be determined by the Minister for the Civil Service: ibid s 28(3). This function of the Minister for the Civil Service was transferred, with others, to the Treasury by the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670. As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

11 Local Government Act 1974 s 28(3).

12 Ibid s 29(6). Any person giving assistance may be paid such fees and allowances as the local commissioner may determine with the approval of the Minister for the Civil Service: s 29(6). See note 10 supra.

13 Local Government Act 1974 s 28(4).

14 Ibid s 29(1). See also *Re a Subpoena Issued by the Commissioner for Local Administration* (1996) 95 LGR 338, sub nom *Re a Subpoena (Adoption: Comr for Local Administration)* [1996] 2 FLR 629 (where, in response to a complaint to the local commissioner from prospective adoptive parents, the council refused to disclose confidential details of children available for adoption, the local commissioner successfully applied to the High Court for a subpoena rather than relying on her power to require the disclosure of this information under the Local Government Act 1974 s 29(1); held that where there was a conflict between public interest immunity and disclosure in these circumstances, the balance should come down in favour of disclosure provided that the local commissioner could show that the material was bona fide and that she was willing and able to comply with the requirements of confidentiality).

15 Ibid s 29(3) (amended by the Government of Wales Act 1998 s 125, Sch 12 para 15(2)). However, this power does not affect the restriction imposed by the Parliamentary Commissioner Act 1967 s 11(2) (as amended) on the disclosure of information by the Parliamentary Commissioner or his officers (see para 41 ante) or the restriction imposed by the Health Service Commissioners Act 1993 s 15 (as amended) on the disclosure of information by the Health Service Commissioner for England or the Health Service Commissioner for Wales, or by their officers (see para 54 post) or the restriction imposed by the Government of Wales Act 1998 s 111, Sch 9 para 25(1) on the disclosure of information by the Welsh Administration Ombudsman or members of his staff (see CONSTITUTIONAL LAW AND HUMAN RIGHTS).

Where information is disclosed in accordance with the Local Government Act 1974 s 29(3) (as amended), being information which is derived from a communication from a government department or the National Assembly for Wales, and which has not been made public, a local commissioner must not without the written consent of an officer of the government department or a member of the Assembly's staff make a report which includes all or any of that information unless he has given the department or the Assembly not less than one month's written notice of that intention: s 32(5).

16 Ibid s 29(2).

17 As to contempt of court see CONTEMPT OF COURT.

18 Local Government Act 1974 s 29(8). The taking by the authority concerned of further action in relation to any matters subject to investigation will not constitute contempt: s 29(10).

19 Ibid s 29(9).

20 Ibid s 30(1). Where the complaint was referred by a person who was a member of an authority but who has since ceased to be a member of that authority, the report or statement must be sent to the chairman or, as the case may be, mayor of that authority: s 30(2).

Where the authority concerned is the Greater London Authority (see LONDON GOVERNMENT vol 29(2) (Reissue) para 79 et seq), the local commissioner may discharge his duty under s 30(1), (2) by sending the report or statement to both the Mayor of London (see LONDON GOVERNMENT vol 29(2) (Reissue) para 81) and the London Assembly (see LONDON GOVERNMENT vol 29(2) (Reissue) para 82): s 30(2AA) (added by the Greater London Authority Act 1999 s 74(4)).

21 Local Government Act 1974 s 30(3). The publication of any matter in the preparation, making and sending of a report or statement is absolutely privileged: s 32(1)(c). However, where a local commissioner is of the opinion that acts amounting to maladministration have been taken by a member of the authority concerned and that the member's conduct constituted a breach of the National Code of Local Government Conduct (see LOCAL GOVERNMENT vol 69 (2009) PARA 236), then, unless the commissioner is satisfied that it would be unjust to do so, the report must name the member and give particulars of the breach: Local Government Act 1974 s 30(3A) (added by the Local Government and Housing Act 1989 s 32(1)(b); and prospectively repealed by the Local Government Act 2000 s 107, Sch 5 para 15(b), Sch 6 as from a day to be appointed). As to the National Code of Local Government Conduct see further LOCAL GOVERNMENT vol 69 (2009) PARA 230 et seq. The report may mention the name of, or contain particulars likely to identify, the Mayor of London or any member of the London Assembly: Local Government Act 1974 s 30(3AA) (added by the Greater London Authority Act 1999 s 74(1), (5)).

22 Local Government Act 1975 s 30(4). Not later than two weeks after the report is received by the authority concerned, the proper officer of the authority must give public notice, by advertisement in newspapers and such other ways as appear to him appropriate, that copies of the report will be available, and must specify the date, not more than one week later, from which the period of three weeks will begin: s 30(5) (amended by the Local Government Act 1988 s 29, Sch 3 para 6(3)). Absolute privilege applies to the publication of any matter in the fulfilment of this obligation: Local Government Act 1974 s 32(1)(c).

23 Ibid s 30(7) (amended by the Local Government Act 1988 Sch 3 para 6).

24 Local Government Act 1974 s 30(4A) (added by the Local Government Act 1988 Sch 3 para 6(2)).

25 Local Government Act 1974 s 30(6). The fine must not exceed level 3 on the standard scale: s 30(6) (amended by virtue of the Criminal Justice Act 1982 ss 38, 46). As to the standard scale see para 39 note 41 ante.

26 Local Government Act 1974 s 31(1), (2) (substituted by the Local Government and Housing Act 1989 s 26). Absolute privilege applies to the publication of any matter in the preparation, making or sending of a report or further report (see the text and notes 27-28 infra): Local Government Act 1974 s 32(1)(c).

27 Ibid s 31(2A) (added by the Local Government Act 1988 Sch 3 para 7; and amended by the Local Government and Housing Act 1989 s 26). The Local Government Act 1974 ss 30 (as amended), 31(2) (as substituted) apply, with any necessary modifications, to such a report: s 31(2C) (added by the Local Government and Housing Act 1989 s 26). The recommendations mentioned in the text are such recommendations as the local commissioner thinks fit to make with respect to action which, in his opinion, the authority concerned should take to remedy the injustice to the person aggrieved and to prevent similar injustice being caused in the future: Local Government Act 1974 s 31(2B) (added by the Local Government and Housing Act 1989 s 26).

28 Local Government Act 1974 s 31(2D) (added by the Local Government and Housing Act 1989 s 26). The statement referred to in the text is a statement, in such form as the authority concerned and the local commissioner may agree, consisting of: (1) details of any action recommended by the local commissioner in his further report which the authority has not taken; (2) such supporting material as the local commissioner may require; and (3) if the authority so requires, a statement of the reasons for its having taken no action on, or not the action recommended in, the report: Local Government Act 1974 s 31(2E) (added by the Local Government and Housing Act 1989 s 26). The requirements for the publication of the statement are that: (a) publication must be in any two editions within a fortnight of a newspaper circulating in the area of the authority agreed with the local commissioner or, in default of agreement, nominated by him; and (b) publication in the first such edition must be arranged for the earliest practicable date: Local Government Act 1974 s 31(2F) (added by the Local Government and Housing Act 1989 s 26). If the authority concerned fails to arrange for the publication of the statement, or is unable, within the period of one month beginning with the date on which it received the notice, or such longer period as the local commissioner may agree in writing, to agree with the local commissioner the form of the statement to be published, the local commissioner must arrange for such a statement to be published in any two editions within a fortnight of a newspaper circulating within the authority's area: Local Government Act 1974 s 31(2G) (added by the Local Government and Housing Act 1989 s 26). The authority concerned must reimburse the Commission on demand any reasonable expenses incurred by the local commissioner in performing this duty: Local Government Act 1974 s 31(2H) (added by the Local Government and Housing Act 1989 s 26).

29 See the Local Government Act 1974 s 31A(1)-(3) (s 31A(1)-(6) added by the Local Government and Housing Act 1989 s 28). However, where the authority concerned is the Greater London Authority, consideration of the further report may be conducted by the Mayor and Assembly acting jointly on behalf of the Greater London Authority: Local Government Act 1974 s 31A(7) (s 31A added by the Greater London Authority Act 1999 s 74(1), (9)).

30 Local Government Act 1974 s 31A(4) (as added: see note 29 supra).

31 Ibid s 31A(5) (as added: see note 29 supra).

32 Ibid s 31(3) (added by the Local Government Act 1978 s 1; and amended by the Local Government Act 1988 s 29, Sch 3 para 7(3), (4); and the Local Government and Housing Act 1989 s 194, Sch 11 para 39). Where the authority concerned is the Greater London Authority, any functions exercisable under the Local Government Act 1974 s 31 (as amended) by or in relation to the Authority are exercisable by or in relation to the Mayor and the Assembly acting jointly on behalf of the Authority, and references to the authority concerned (other than references to a member of the authority concerned) are to be construed accordingly: s 31(4) (added by the Greater London Act 1999 s 74(1), (7)).

33 In any of the authorities mentioned in the Local Government Act 1974 s 25(1) (as amended): see para 47 ante. Any notice given under s 32(3) (as amended) by any authority may be discharged by the Secretary of State: s 32(3) proviso. As to the Secretary of State see para 39 note 41 ante.

34 Ibid s 32(3) (amended by the Local Government, Planning and Land Act 1980 s 184(1)). See also *Re a Subpoena Issued by the Commissioner for Local Administration* (1996) 95 LGR 338, sub nom *Re a Subpoena (Adoption: Comr for Local Administration)* [1996] 2 FLR 629. Before the provision was amended, the relevant information could be withheld from the commissioner himself: see *Re Liverpool City Council* [1977] 2 All ER 650, [1977] 1 WLR 995, DC. A Minister of the Crown in this context includes the Commissioners of Customs and Excise and the Commissioners of Inland Revenue: Local Government Act 1974 s 32(6).

35 Ibid s 32(3) (as amended: see note 34 supra). Nothing in s 32(3) (as amended) affects the obligation imposed by s 29(3) (as amended), (4) upon any person to furnish information or produce documents to a local commissioner concerning communications between an authority and any government department or the National Assembly for Wales: s 32(4).

36 Ibid s 29(4). This applies to any obligation or restriction whether imposed by any enactment or by any rule of law: s 29(4).

37 Ibid s 29(4). Subject to this provision, no person can be compelled for the purposes of an investigation to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the High Court: s 29(7).

38 See *ibid* s 23(1); para 49 post; and LOCAL GOVERNMENT vol 69 (2009) PARA 839 et seq.

39 *Ie* under the Official Secrets Acts 1911 to 1989: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 478 et seq.

40 Or for the purposes of an inquiry with a view to the taking of such proceedings: Local Government Act 1974 s 32(2) (as amended: see note 42 infra).

41 *Ie* under *ibid* s 29(9): see the text and note 19 supra.

42 Ibid s 32(2) (amended by the Official Secrets Act 1989 s 16(3), Sch 1 para 1). This prohibition does not apply to the disclosure of information to the Parliamentary Commissioner for Administration, the Health Service Commissioners or the Welsh Administration Ombudsman in the course of consultations held in accordance with the Local Government Act 1974 s 33 (as amended): s 33(5).

43 Ibid s 32(2). Information obtained from the Information Commissioner by virtue of the Freedom of Information Act 2000 s 76 is to be treated for the purposes of the Local Government Act 1974 s 32(2) as obtained for the purposes of an investigation under Pt III (as amended) and, in relation to such information, the reference in that provision to the investigation has effect as a reference to any investigation: s 32(7) (added by the Freedom of Information Act 2000 s 76(2), Sch 7 para 3). See CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) paras 609 et seq, 615.

44 *Ie* under the Parliamentary Commissioner Act 1967 s 5 (as amended): see paras 41-44 ante.

45 *Ie* an ethical standards officer to whom a written investigation has been referred for investigation by the Standards Board for England: Local Government Act 2000 s 67(2).

46 *Ie* in accordance with the Government of Wales Act 1998: see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

47 *Ie* under the Health Service Commissioners Act 1993: see para 54 post.

48 Local Government Act 1974 s 33(1) (amended by the Health Service Commissioners Act 1993 s 20(1), Sch 2 para 4; and the Government of Wales Act 1998 s 125, Sch 12 para 17(2)).

49 Local Government Act 1974 s 33(2) (amended by the Government of Wales Act 1998 Sch 12 para 17(3)). As to consultation with an ethical officer of the Standards Board for England see the Local Government Act 2000 s 67(2).

50 For the duty of the Health Service Commissioners to consult with a local commissioner see the Health Service Commissioners Act 1993 s 18 (as amended); and para 54 post.

51 Local Government Act 1974 s 33(3) (amended by the Health Service Commissioners Act 1993 s 20, Sch 2 para 4, Sch 3); Local Government Act 2000 s 67(1).

52 Local Government Act 1974 s 33(4) (amended by the Health Service Commissioners Act 1993 Sch 2 para 4, Sch 3). See also the Health Service Commissioners Act 1993 s 18(2) (see para 54 post); and the Local Government Act 2000 s 67(3).

UPDATE

45-49 The Welsh Administration Ombudsman, The Commissions for Local Authorities

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

48 Procedure and evidence

TEXT AND NOTES--1974 Act ss 32, 33 further amended: Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 13, 15, Sch 7. As to a commissioner conducting a joint investigation with another commissioner, see the 1974 Act s 33ZA (added by the Regulatory Reform (Collaboration etc between Ombudsmen) Order 2007, SI 2007/1889); and PARA 44.

1974 Act ss 27-33 and 2005 Act Sch 6 para 13 further amended: Local Government and Public Involvement in Health Act 2007 ss 174(2), 175, 176, 178, Sch 3 para 14, Sch 12 paras 4-8, Sch 18 Pts 3, 14. See also 1974 Act s 31B (added by 2007 Act s 177) (publication of reports etc by commissioners).

TEXT AND NOTE 2--In head (1) reference to the National Assembly for Wales is now to the Welsh Ministers, the National Assembly for Wales Commission or the National Assembly for Wales; and in head (2) references to the National Assembly for Wales are now to the Welsh Ministers: 1974 Act s 27(1) (amended by Government of Wales Act 2006 Sch 10 para 10).

NOTE 6--1974 Act s 26(10) repealed: 2007 Act Sch 12 para 3(6), Sch 18 Pt 14.

NOTE 8--The publication of any matter by a local commissioner or by any person discharging or assisting in the discharge of a function of a local commissioner in communicating with the Parliamentary Commissioner or the Health Service Commissioner for England or any officer of either such commissioner for the purposes of the 1974 Act Pt 3 (ss 23-34) is absolutely privileged: s 32(1)(ba) (added by SI 2007/1889; and amended by 2007 Act s 182, Sch 12 paras 1, 7(1), (4)).

TEXT AND NOTE 15--Reference to National Assembly for Wales omitted: 1974 Act s 29(3) (amended by 2005 Act Sch 6 para 12(2), Sch 7).

NOTE 15--Government of Wales Act 1998 s 111, Sch 9 repealed: 2005 Act Sch 7. Reference to Welsh Administration Ombudsman is now to Public Services Ombudsman for Wales: see LOCAL GOVERNMENT vol 69 (2009) PARA 267 et seq.

NOTE 29--Local Government Act 1974 s 31A(3) amended: Marine and Coastal Access Act 2009 Sch 14 para 9 (not yet in force).

Local Government Act 1974 s 31A(3) partly repealed: Marine and Coastal Access Act 2009 Sch 22 Pt 4 (in force in relation to Wales: SI 2010/630).

TEXT AND NOTE 42--Also, head (d) read for the purposes of a complaint which is being investigated by the Parliamentary Commissioner of the Health Service Commissioner for England, or both: 1974 Act s 32(2) (amended by SI 2007/1889).

NOTE 42--The prohibition on disclosure of information in the 1974 Act s 32(2) does not apply to the disclosure of information to the Information Commissioner if the information appears to the Local Commissioner to relate to (1) a matter in respect of which the Information Commissioner (see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 518 et seq) could exercise any power conferred by the Data Protection Act 1998 Pt V (ss 40-50) (enforcement) (see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARAS 559-565, 568, 575-576), the Freedom of Information Act 2000 s 48 (practice recommendations) (see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) PARA 608), or Pt IV (ss 50-56) (enforcement); or (2) the commission of an offence under any provision of the Data Protection Act 1998 other than Sch 9 para 12

(obstruction of execution of warrant) or the Freedom of Information Act 2000 s 77 (offence of altering etc records with intent to prevent disclosure): 1974 Act s 33A (added by Freedom of Information Act 2000 s 76(2), Sch 7 para 4).

NOTES 45-52--Local Government Act 2000 s 67 amended: 2005 Act Sch 4 para 8; 2007 Act s 196, Sch 12 para 17(3).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/3. NON-JUDICIAL REDRESS IN RESPECT OF ADMINISTRATIVE ACTION/(4) THE COMMISSIONERS FOR LOCAL ADMINISTRATION/49. The Commissions for Local Administration.

49. The Commissions for Local Administration.

The Local Government Act 1974 created a body of commissioners known as the Commission for Local Administration in England and a body consisting of two or more commissioners known as the Commission for Local Administration in Wales¹. The Parliamentary Commissioner is a member of both Commissions². The Welsh Administration Ombudsman is a member of the Commission for Local Administration for Wales (so that where the offices of Parliamentary Commissioner and Welsh Administration Ombudsman are held by different persons, the Commission for Local Administration in Wales will consist of at least three commissioners)³. Local commissioners are appointed by Her Majesty on the recommendation of the Secretary of State⁴ after consultation with the appropriate representative body⁵. They hold office during good behaviour⁶. A person is disqualified for being appointed as, or for being, a local commissioner if he is disqualified for being elected, or being, a member of any authority subject to investigation by a local commissioner or is a member of any such authority or is a member (by co-option) of a committee of any of those authorities⁷. Local commissioners may be appointed to serve either as full-time commissioners or as part-time commissioners⁸.

England is divided into areas by the Commission for Local Administration in England, and one or more of the local commissioners is responsible for each area⁹. Each of the Commissions makes arrangements to enable local commissioners to investigate complaints, in particular (1) allocating members of their staff to assist local commissioners; and (2) providing offices and other accommodation¹⁰. Each of the Commissions must make arrangements for local commissioners to accept cases for which they are not responsible including, where requested, a case arising in the country of the other commission, and must publish information about the procedures for making complaints under the Local Government Act 1974¹¹.

For each financial year, every local commissioner must prepare a general report on the discharge of his functions and submit it not later than two months after the end of the year to which it relates to his commission¹². In the financial year beginning on 1 April 1990, and in every third financial year afterwards, the Commissions must review the operation of the provisions in the Local Government Act 1974 relating to the investigation of complaints, and may convey to authorities subject to investigation by a local commissioner, or to government departments or the National Assembly for Wales, any recommendations or conclusions reached in the course of their reviews and must send copies of those recommendations and conclusions to such persons as appear to the Commissions to be the representative persons and authorities concerned¹³.

Each of the Commissions may, after consultation with the representative persons and authorities concerned, provide to the authorities such advice and guidance about good administrative practice as appears to the commission to be appropriate and may arrange for it to be published for the information of the public¹⁴.

For each financial year, each of the Commissions must prepare a general report on the discharge of their functions, submit it to such persons as appear to the commission to represent authorities in England or Wales and, in the case of authorities not so represented, to the authorities themselves¹⁵ and arrange for its publication¹⁶. Before arranging for the publication of a report, the commission concerned must give a reasonable opportunity for the appropriate representative persons and authorities to comment on it¹⁷.

1 Local Government Act 1974 s 23(1)(a), (b). Each of the Commissions may include persons appointed to act as advisers, not exceeding the number appointed to conduct investigations: s 23(1) (amended by the Local Government and Housing Act 1989 s 22). The Commissions are bodies corporate and have power to determine their own procedures: Local Government Act 1974 s 23(13), Sch 4 para 5. Each of the Commissions may appoint a secretary and such other officers as they may consider to be required for the discharge of their functions: Sch 4 para 4(1). See further LOCAL GOVERNMENT vol 69 (2009) PARA 839 et seq.

2 Ibid s 23(2). However, references to 'a local commissioner' in the Local Government Act 1974 do not include the Parliamentary Commissioner: see s 23(3). As to the Parliamentary Commissioner see paras 41-44 ante.

3 Ibid s 23(2A) (added by the Government of Wales Act 1998 s 125, Sch 12 para 12(2)).

4 As to the Secretary of State see para 13 note 11 ante.

5 Local Government Act 1974 s 23(4) (amended by the Local Government and Housing Act 1989 ss 22, 94, Sch 11 para 37, Sch 12 Pt II).

6 Local Government Act 1974 s 23(4) (as amended: see note 5 supra). A local commissioner may be removed from office at his own request or on grounds of incapacity or misbehaviour and must in any case vacate office on completing the year of service in which he attains the age of 65: s 23(6) (amended by the Local Government and Housing Act 1989 Sch 12 Pt II).

Provision is made for the payment of a salary, a pension and (if appropriate) compensation for ceasing to be a local commissioner or an advisory member of a local commission: Local Government Act 1974 Sch 4 para 3 (amended by the Local Government and Housing Act 1989 s 22(5)).

7 Local Government Act 1974 Sch 4 para 1(1). The authorities which are subject to investigation by a local commissioner are set out in s 25(1) (as amended): see para 47 ante.

A local commissioner may not conduct an investigation in an area if it is wholly or partly within the area covered by an authority of which, in the last five years, he was a member (or was disqualified for membership), or a member (by co-option) of a committee of that authority: see Sch 4 para 1(2). A local commissioner is disqualified for the duration of his office and for three years thereafter from appointment to paid office with any authority within the area for which he was responsible: Sch 4 para 2.

However, the acts and proceedings of a person appointed as a local commissioner and acting in that office will, notwithstanding his disqualification, be as valid and effectual as if he had been qualified: Sch 4 para 1(3).

8 Ibid s 23(5) (amended by the Local Government and Housing Act 1989 Sch 12 Pt II). The Secretary of State designates two of the local commissioners for England as chairman and vice-chairman respectively of the Commission for Local Administration in England and, in the event of there being more than one local commissioner for Wales, the Secretary of State must designate one of them as chairman of the Commission for Local Administration in Wales: Local Government Act 1974 s 23(7).

9 Ibid s 23(8). England has been divided into three areas: (1) Greater London, Essex, Kent, Norfolk, Suffolk, Surrey and Sussex; (2) the South and West (including the Isles of Scilly: s 23(9)), the West Midlands, Leicestershire, Lincolnshire and Cambridgeshire; (3) the North of England and the North Midlands. A local commissioner is responsible for each area (though there is provision for a local commissioner to be made responsible for more than one area): s 23(8).

Where the Commission for Local Administration in Wales consists of more than one local commissioner, they may, if they think fit, divide Wales into areas and allocate responsibility accordingly: s 23(8).

10 Ibid Sch 4 para 4(2)-(4). Any function of a local commissioner may be performed by any officer of the Commission who is authorised for the purpose by the local commissioner: Sch 4 para 4(5) (amended by the Local Government Act 1988 ss 29, 41, Sch 3 para 9(1), Sch 7 Pt II).

11 Local Government Act 1974 s 23(10).

12 Ibid s 23(11). Where a local commissioner has discharged functions at the request of the other Commission, he must prepare a general report on the discharge of those functions and must submit it to the other Commission: s 23(11).

13 Ibid s 23(12) (amended by the Local Government Act 1988 s 29, Sch 3 para 2(1); the Local Government and Housing Act 1989 s 194, Sch 11 para 38, Sch 12 Pt II; and the Government of Wales Act 1998 s 125, Sch 12 para 12(4)). The representative persons and authorities concerned are such persons appearing to the Commission to represent authorities in England or, as the case may be, authorities in Wales, and in the case of such authorities as are not so represented, those authorities: Local Government Act 1974 s 23(12B)(a) (added by the Local Government and Housing Act 1989 s 22).

14 Local Government Act 1974 s 23(12A) (added by the Local Government and Housing Act 1989 s 22). The representative persons and authorities concerned are such of those persons appearing to the Commission to represent authorities in England or, as the case may be, authorities in Wales as the Commission thinks appropriate: Local Government Act 1974 s 23(12B)(b) (added by the Local Government and Housing Act 1989 s 22).

15 Local Government Act 1974 s 23A(1) (s 23A added by the Local Government and Housing Act 1989 s 25(2)).

16 Local Government Act 1974 s 23A(3) (as added: see note 15 supra). The report must be submitted as soon as may be after the Commission has received the reports for the year from the local commissioners under s 23(11) (see the text and note 12 supra), and each Commission must submit and subsequently publish copies of these reports together with its own report: s 23A(2) (as so added). Publication of any matter in these reports is absolutely privileged: s 32(1)(d). Where the Commission for Local Administration in Wales consists of only one local commissioner, ss 23(11), 23A(2) (as added) have effect with the necessary modifications: s 23A(6) (as so added).

17 Ibid s 23A(4) (as added: see note 15 supra). Comments made by representative persons or authorities may relate to a particular class of authorities subject to investigation: s 23A(5) (as so added).

UPDATE

45-49 The Welsh Administration Ombudsman, The Commissions for Local Authorities

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

49 The Commissions for Local Administration

TEXT AND NOTES--The Commission for Local Administration in Wales is abolished: Public Services Ombudsman (Wales) Act 2005 s 36(1). Provision is made for the transfer of staff, property, rights and liabilities from the Commission for Local Administration in Wales to the Public Services Ombudsman for Wales (see PARA 49A): see s 37, Sch 5. 1974 Act ss 23, 23A, Sch 4 further amended: Public Services Ombudsman (Wales) Act 2005 Sch 6 paras 8, 9, 18, Sch 7. 1974 Act ss 23, 23A, Sch 4 and 2005 Act Sch 6 paras 9, 18 further amended: Local Government and Public Involvement in Health Act 2007 ss 168-170, 179, 181, Sch 12 paras 2, 11, Sch 18 Pt 14.

NOTE 2--1974 Act s 23(3) amended: SI 2004/2359.

TEXT AND NOTE 3--1974 Act s 23(2A) repealed: SI 2004/2359.

NOTE 5--1989 Act Sch 11 para 37 repealed: 2007 Act Sch 18 Pt 14.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/3. NON-JUDICIAL REDRESS IN RESPECT OF ADMINISTRATIVE ACTION/(4) THE COMMISSIONERS FOR LOCAL ADMINISTRATION/49A. The Public Services Ombudsman for Wales.

49A. The Public Services Ombudsman for Wales.

The following provisions are in force unless otherwise stated: SI 2005/2800. The Public Services Ombudsman (Wales) Act 2005 establishes the office of the Public Services Ombudsman for Wales. The Commission for Local Administration in Wales and the offices of Welsh Administration Ombudsman, Health Service Commissioner for Wales and Social Housing Ombudsman for Wales are abolished. For consequential and transitional provisions see s 43 (amended by the Government of Wales Act 2006 Sch 10 para 84).

1. Establishment

The office of the Public Services Ombudsman for Wales¹ or Ombwdsmon Gwasanaethau Cyhoeddus Cymru ('the Ombudsman') is established². Further provision is made about the Ombudsman³.

1 In the Public Services Ombudsman (Wales) Act 2005 'Wales' has the meaning given in the Government of Wales Act 1998 s 155(1); 2005 Act s 41(1).

2 Ibid s 1(1).

3 See ibid s 1(2), Sch 1 (amended by the Government of Wales Act 2006 Sch 10 para 86) which includes provision relating to (1) appointment; (2) status; (3) term of office; (4) acting Public Services Ombudsman for Wales; (5) disqualification; (6) remuneration; (7) special financial provision; (8) staff; (9) advisers; (10) delegation; (11) annual and extraordinary reports; (12) estimates (partly in force); (13) accounts; (14) audit; (15) accounting officer; (16) examinations into the use of resources; (17) examinations by the Comptroller and Auditor General; and (18) supplementary powers.

2. Power of investigation

The Ombudsman¹ may investigate a complaint in respect of a matter if (1) the complaint has been duly made or referred² to him, and (2) the matter is one which he is entitled to investigate³. It is for the Ombudsman to decide whether to begin, continue or discontinue an investigation⁴. The Ombudsman may begin or continue an investigation into a complaint even if the complaint, or the referral of the complaint, has been withdrawn⁵.

1 In the Public Services Ombudsman (Wales) Act 2005 'the Ombudsman' has the meaning given in s 1 (see PARA 49A.1): s 41(1).

2 A complaint is 'duly made' to the Ombudsman if (but only if) (1) it is made by a person who is entitled under ibid s 4 (see PARA 49A.4) to make the complaint to the Ombudsman, and (2) the requirements of s 5 are met in respect of it: s 2(2). A complaint is 'duly referred' to the Ombudsman if (but only if) (a) it is referred to him by a listed authority, and (b) the requirements of s 6 are met in respect of it: s 2(3). In the 2005 Act 'listed authority' has the meaning given in s 28 (see PARA 49A.24): s 41(1).

The requirements mentioned in head (2) are that (i) the complaint must be made in writing; (ii) the complaint must be made to the Ombudsman before the end of the period of one year starting on the day on which the person aggrieved first has notice of the matters alleged in the complaint: s 5(1). In the 2005 Act 'the person aggrieved' has the meaning given in s 4(1)(a) (see PARA 49A.4): s 41(1). It is for the Ombudsman to determine any question of whether the requirements of s 5(1) are met in respect of a complaint: s 5(2).

The requirements mentioned in head (b) are that (A) the complaint must have been made to the listed authority by a person who would have been entitled under s 4 to make the complaint to the Ombudsman; (B) the complaint must have been made to the listed authority before the end of the period of one year starting on the day on which the person aggrieved first had notice of the matters alleged in the complaint; (C) the complaint

must be referred to the Ombudsman in writing; (D) the complaint must be referred to the Ombudsman before the end of the period of one year starting on the day on which the complaint was made to the listed authority: s 6(1). It is for the Ombudsman to determine any question of whether the requirements of s 6(1) are met in respect of a complaint: s 6(2).

The Ombudsman may investigate a complaint in respect of a matter even if the requirements of s 5(1) or (as the case may be) head (B) or (D) are not met in respect of the complaint, if (aa) the matter is one which he is entitled to investigate under ss 7-11 (see PARAS 49A.5-49A.9), and (bb) he thinks it reasonable to do so: s 2(4).

3 Ie investigate under ibid ss 7-11: s 2(1).

4 Ibid s 2(5). The Ombudsman may take any action which he thinks may assist in making a decision under s 2(5): s 2(6). In the 2005 Act 'act' and 'action' include a failure to act (and related expressions must be construed accordingly): s 41(1).

5 Ibid s 2(7).

3. Alternative resolution of complaints

The Ombudsman may take any action he thinks appropriate with a view to resolving a complaint which he has power to investigate¹. The Ombudsman may take action these provisions² in addition to or instead of conducting an investigation³ into the complaint⁴. Any action under these provisions must be taken in private⁵.

1 Ie under the Public Services Ombudsman (Wales) Act 2005 s 2 (see PARA 49A.2): s 3(1).

2 Ie ibid s 3.

3 In the 2005 Act 'investigation', in relation to the Ombudsman, means an investigation under s 2 (and cognate expressions must be construed accordingly); in relation to another ombudsman or commissioner, includes an examination (and cognate expressions must be construed accordingly): s 41(1) (amended by the Commissioner for Older People (Wales) Act 2006 Sch 4 para 2(4)).

4 2005 Act s 3(2).

5 Ibid s 3(3).

4. Who can complain

The persons entitled to make a complaint to the Ombudsman are (1) a member of the public¹ (in the Public Services Ombudsman (Wales) Act 2005 referred to as 'the person aggrieved') who claims or claimed to have sustained injustice or hardship in consequence of a matter which the Ombudsman is entitled to investigate²; (2) a person authorised by the person aggrieved to act on his behalf; (3) if the person aggrieved is not capable of authorising a person to act on his behalf (for example because he has died), a person who appears to the Ombudsman to be appropriate to act on behalf of the person aggrieved³. It is for the Ombudsman to determine any question of whether a person is entitled under the above provisions to make a complaint to him⁴.

1 'Member of the public' means any person other than a listed authority acting in its capacity as such: Public Services Ombudsman (Wales) Act 2005 s 4(2). As to listed authorities see PARA 49A.24.

2 Ie under ibid ss 7-11: see PARAS 49A.5-49A.9.

3 Ibid s 4(1).

4 Ibid s 4(3).

5. Matters which may be investigated

The matters which the Ombudsman is entitled to investigate are (1) alleged maladministration by a listed authority¹ in connection with relevant action²; (2) an alleged failure in a relevant service³ provided by a listed authority; (3) an alleged failure by a listed authority to provide a relevant service⁴.

1 As to listed authorities see PARA 49A.24.

2 Relevant action is (1) in the case of a listed authority which is a family health service provider in Wales or an independent provider in Wales, action taken by the authority in connection with the provision of a relevant service (see NOTE 3); (2) in the case of a listed authority which is a social landlord in Wales or a Welsh health service body other than the Welsh Ministers, action taken by the authority in the discharge of any of its functions; (3) in the case of a listed authority which is a person with functions conferred by regulations made under the Health and Social Care (Community Health and Standards) Act 2003 s 113(2) (see HEALTH SERVICES vol 54 (2008) PARA 596), action taken by the authority in the discharge of any of those functions; (4) in the case of a listed authority which is a listed authority by virtue of an order under the Public Services Ombudsman (Wales) Act 2005 s 28(2) adding it to Sch 3 (see PARA 49A.24), action taken by the authority in the discharge of any of its specified functions; (5) in any other case, action taken by the authority in the discharge of any of its administrative functions: s 7(3) (amended by the Government of Wales Act 2006 Sch 10 para 68). For the purposes of head (4), a listed authority's specified functions are the functions specified in relation to the authority in an order under the 2005 Act s 28(2) as falling within the Ombudsman's remit: s 7(5). An administrative function which may be discharged by a person who is a member of the administrative staff of a relevant tribunal is to be treated as an administrative function of a listed authority for the purposes of s 7(3) if the person was appointed by the authority, or the person was appointed with the consent of the authority (whether as to remuneration and other terms and conditions of service or otherwise): s 7(6). In the 2005 Act 'relevant tribunal' means a tribunal (including a tribunal consisting of only one person) specified by order made by the Welsh Ministers: s 41(1) (amended by the Government of Wales Act 2006 Sch 10 para 82(2)(b)). As to orders under the 2005 Act generally see s 44 (amended by the Government of Wales Act 2006 Sch 10 para 85).

'Family health service provider in Wales' means (1) a person who, at the time of action which is the subject of a complaint under the 2005 Act, provided services under a contract entered into by that person with a Local Health Board under the National Health Service (Wales) Act 2006 s 42 or s 57; (2) a person who, at that time, had undertaken to provide in Wales general ophthalmic services or pharmaceutical services under the National Health Service (Wales) Act 2006; (3) an individual who, at that time, provided in Wales primary medical services or primary dental services in accordance with arrangements made under the National Health Service (Wales) Act 2006 s 50 or 64 (except as an employee of, or otherwise on behalf of, a Welsh health service body or an independent provider in Wales): 2005 Act s 41(1) (definition amended by the National Health Service (Consequential Provisions) Act 2006 Sch 1 para 280(a); SI 2006/363). See further HEALTH SERVICES vol 54 (2008) PARA 655. 'Welsh health service body' means (a) the Welsh Ministers; (b) a Local Health Board; (c) an NHS trust managing a hospital or other establishment or facility in Wales; (d) a Special Health Authority not discharging functions only or mainly in England: 2005 Act s 41(1) (amended by the Government of Wales Act 2006 Sch 10 para 82(2)(d)). 'NHS trust' has the same meaning as in the National Health Service (Wales) Act 2006: 2005 Act s 41(1) (amended by National Health Service (Consequential Provisions) Act 2006 Sch 1 para 280(b)). 'Independent provider in Wales' means a person who, at the time of action which is the subject of a complaint under the 2005 Act (i) provided services of any kind in Wales under arrangements with a Welsh health service body or a family health service provider in Wales, and (ii) was not a Welsh health service body or a family health service provider in Wales: s 41(1). 'Social landlord in Wales' means (A) a body which was at the time of action which is the subject of a complaint under the 2005 Act registered as a social landlord in the register maintained by the Welsh Ministers under the Housing Act 1996 s 1 (or in the register previously maintained under s 1 by the National Assembly for Wales constituted by the Government of Wales Act 1998, the Secretary of State or Housing for Wales); (B) any other body which at the time of action which is the subject of a complaint under the 2005 Act was registered with Housing for Wales, the Secretary of State the National Assembly for Wales constituted by the Government of Wales Act 1998 or the Welsh Ministers and owned or managed publicly-funded dwellings: s 41(1) (amended by the Government of Wales Act 2006 Sch 10 para 82(2)(c)). 'Publicly-funded dwelling' means (aa) a dwelling which was provided by means of a grant under (AA) the Housing Act 1996 s 18 (social housing grant) or (BB) the Housing Act 1988 s 50, the Housing Associations Act 1985 s 41, or the Housing Act 1974 s 29 or 29A (housing association grant); (bb) a dwelling which was acquired on a disposal by a public sector landlord (within the meaning of the Housing Act 1996 Pt 1): 2005 Act s 41(1). See further HOUSING.

For the purposes of the definition of 'independent provider in Wales', arrangements with the Welsh Ministers are arrangements with a Welsh health service body only to the extent that they are made in the discharge of a function of the Welsh Ministers relating to the National Health Service: s 41(2) (amended by the Government of Wales Act 2006 Sch 10 para 82(3)). A statutory instrument containing an order under subsection (1) is subject to annulment in pursuance of a resolution of the National Assembly for Wales: 2005 Act s 41(2A) (added by the Government of Wales Act 2006 Sch 10 para 82(4)). The Welsh Ministers may by order amend the definitions of

'family health service provider in Wales', 'independent provider in Wales' and 'social landlord in Wales': 2005 Act s 41(3) (amended by the Government of Wales Act 2006 Sch 10 para 82(5)). Before making an order under the 2005 Act s 41(3), the Welsh Ministers must consult such persons as they think appropriate: s 41(4) (amended by the Government of Wales Act 2006 Sch 10 para 82(6)). No order is to be made under the 2005 Act s 41(3) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the Assembly: s 41(4A) (added by the Government of Wales Act 2006 Sch 10 para 82(7)).

For the purposes of the Public Services Ombudsman (Wales) Act 2005, references to action taken by a listed authority include action taken by (1) a member, co-opted member, committee or sub-committee of the authority acting in the discharge of functions of the authority; (2) an officer or member of staff of the authority, whether acting in the discharge of his own functions or the functions of the authority; (3) any other person acting on behalf of the authority: s 41(6). 'Co-opted member', in relation to an authority, means a person who is not a member of the authority but who (a) is a member of a committee or sub-committee of the authority, or (b) is a member of, and represents the authority on, a joint committee on which the authority is represented or a sub-committee of such a committee, and who is entitled to vote on any question which falls to be decided at a meeting of the committee or sub-committee: s 41(1).

3 A relevant service is (1) in the case of a listed authority which is a family health service provider in Wales, any of the family health services which the authority had, at the time of the action which is the subject of the complaint, entered into a contract, undertaken, or made arrangements, to provide; (2) in the case of a listed authority which is an independent provider in Wales, any service which the authority had, at that time, made arrangements with a Welsh health service body or a family health service provider in Wales to provide; (3) in the case of a listed authority falling within *ibid* s 7(3)(c) (see NOTE 2), any service which it was, at that time, the authority's function to provide in the discharge of any of the functions mentioned in that provision; (4) in the case of a listed authority falling within s 7(3)(d) (see NOTE 2), any service which it was, at that time, the authority's function to provide in the discharge of any of its specified functions; (5) in any other case, any service which it was, at that time, the authority's function to provide: s 7(4). In the Public Services Ombudsman (Wales) Act 2005 'family health services' means services mentioned in any of heads (1)-(4) of the definition of 'family health service provider in Wales' (see NOTE 2): s 41(1). For the purposes of head (4), a listed authority's specified functions are the functions specified in relation to the authority in an order under s 28(2) as falling within the Ombudsman's remit: s 7(5).

4 *Ibid* s 7(1). Section 7(1) is subject to ss 8-11 (see PARAS 49A.6-49A.9): s 7(2).

6. Exclusion: matters not relating to Wales

The Ombudsman may not investigate a matter arising in connection with the discharge by a listed authority¹ of any of the authority's functions otherwise than in relation to Wales².

1 As to listed authorities see PARA 49A.24.

2 Public Services Ombudsman (Wales) Act 2005 s 8(1). Section 8(1) does not apply in relation to the Welsh Assembly Government: s 8(2) (amended by the Government of Wales Act 2006 Sch 10 para 69). To the extent that a function of a listed authority is discharged in relation to the Welsh language or any other aspect of Welsh culture, it is to be regarded for the purposes of the 2005 Act s 8(1) as discharged in relation to Wales: s 8(3).

7. Exclusion: other remedies

The Ombudsman may not investigate a matter if the person aggrieved has or had (1) a right of appeal, reference or review to or before a tribunal constituted under an enactment or by virtue of Her Majesty's prerogative, (2) a right of appeal to a Minister of the Crown, the Welsh Ministers, the First Minister for Wales or the Counsel General to the Welsh Assembly Government, or (3) a remedy by way of proceedings in a court of law¹. The Ombudsman may investigate a matter only if he is satisfied that (a) the matter has been brought to the attention of the listed authority² to which it relates by or on behalf of the person aggrieved, and (b) the authority has been given a reasonable opportunity to investigate and respond to it³.

1 Public Services Ombudsman (Wales) Act 2005 s 9(1). But s 9(1) does not apply if the Ombudsman is satisfied that, in the particular circumstances, it is not reasonable to expect the person to resort, or to have resorted, to the right or remedy: s 9(2).

2 As to listed authorities see PARA 49A.24.

3 2005 Act s 9(3) (amended by the Government of Wales Act 2006 Sch 10 para 70). But 2005 Act s 9(3) does not prevent the Ombudsman from investigating a matter if he is satisfied that it is reasonable in the particular circumstances for him to investigate the matter despite the fact that the requirements of s 9(3) have not been met: s 9(4).

8. Other excluded matters

The Ombudsman may not investigate specified matters¹.

1 I.e. a matter specified in the Public Services Ombudsman (Wales) Act 2005 Sch 2 (amended by the Government of Wales Act 2006 Sch 10 para 87; the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238; the Public Services Ombudsman for Wales (Jurisdiction and Transitional Provisions and Savings) Order 2006, SI 2006/363): 2005 Act s 10(1). The Welsh Ministers may by order amend Sch 2 by (1) adding an entry; (2) removing an entry; (3) changing an entry: s 10(2) (s 10 amended, s 10(3A) added by the Government of Wales Act 2006 Sch 10 para 71). As to orders under the 2005 Act generally see s 44 (amended by the Government of Wales Act 2006 Sch 10 para 85).

Before making an order under the 2005 Act s 10(2), the Welsh Ministers must consult the Ombudsman: s 10(3) (as so amended). No order is to be made under s 10(2) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the National Assembly for Wales: s 10(3A) (as so added). Section 10(1) does not prevent the Ombudsman from investigating action of a listed authority in operating a procedure established to examine complaints or review decisions: s 10(4). As to listed authorities see PARA 49A.24.

9. Decisions taken without maladministration

The Ombudsman may not question the merits of a decision taken without maladministration by a listed authority¹ in the exercise of a discretion².

1 As to listed authorities see PARA 49A.24.

2 Public Services Ombudsman (Wales) Act 2005 s 11(1). Section 11(1) does not apply to the merits of a decision to the extent that the decision was taken in consequence of the exercise of professional judgement which appears to the Ombudsman to be exercisable in connection with the provision of health or social care: s 11(2).

10. Decisions not to investigate or to discontinue investigation

If the Ombudsman decides¹ (1) not to begin an investigation into a complaint in respect of a listed authority², or (2) to discontinue such an investigation, he must prepare a statement of the reasons for his decision³. The Ombudsman must send a copy of the statement to (a) the person who made the complaint, and (b) the listed authority⁴. The Ombudsman may send a copy of the statement to any other persons he thinks appropriate⁵. The Ombudsman may publish a statement under these provisions⁶ if, after taking account of the interests of the person aggrieved and any other persons he thinks appropriate, he considers it to be in the public interest to do so⁷. If a statement⁸ (i) mentions the name of any person other than the listed authority in respect of which the complaint was made, or (ii) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in his opinion, can be omitted without impairing the effectiveness of the statement, that information must not be included in a version of the statement sent to a person⁹ or published¹⁰.

1 I.e. under the Public Services Ombudsman (Wales) Act 2005 s 2(5): see PARA 49A.2.

2 As to listed authorities see PARA 49A.24.

3 2005 Act s 12(1).

4 Ibid s 12(2).

5 Ibid s 12(3).

6 Ie under ibid s 12.

7 Ibid s 12(4). The Ombudsman may supply a copy of a statement published under s 12(4), or any part of such a statement, to any person who requests it: s 12(5). The Ombudsman may charge a reasonable fee for supplying a copy of a statement, or part of a statement, under s 12(5): s 12(6).

8 Ie prepared under ibid s 12(1).

9 Ie under ibid s 12(2) or (3).

10 Ibid s 12(7), referring to publication under s 12(4). This is subject to s 12(8): s 12(7). Section 12(7) does not apply in relation to a version of the statement if, after taking account of the interests of the person aggrieved and any other persons he thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the statement: s 12(8).

11. Investigation procedure

If the Ombudsman conducts an investigation into a complaint in respect of a listed authority¹, he must (1) give the listed authority an opportunity to comment on any allegations contained in the complaint; (2) give any other person who is alleged in the complaint to have taken or authorised the action complained of an opportunity to comment on any allegations relating to that person². An investigation must be conducted in private³. The procedure for conducting an investigation is to be such as the Ombudsman thinks appropriate in the circumstances of the case⁴. In particular, the Ombudsman may (a) make such inquiries as he thinks appropriate; (b) determine whether any person may be represented in the investigation by an authorised person⁵ or otherwise⁶. The Ombudsman may pay to the person who made the complaint and to any other person who attends or supplies information for the purposes of the investigation (i) such sums as he may determine in respect of expenses properly incurred by them, and (ii) such allowances as he may determine by way of compensation for the loss of their time, subject to such conditions as he may determine⁷. The conduct of an investigation in respect of a listed authority does not affect (A) the validity of any action taken by the listed authority, or (B) any power or duty of the listed authority to take further action with respect to any matter under investigation⁸.

1 As to listed authorities see PARA 49A.24.

2 Public Services Ombudsman (Wales) Act 2005 s 13(1).

3 Ibid s 13(2).

4 Ibid s 13(3). Section 13(3) is subject to s 13(1), (2): s 13(3).

5 'Authorised person' means a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes the exercise of a right of audience or the conduct of litigation (within the meaning of that Act) (see LEGAL PROFESSIONS vol 65 (2008) PARA 512): Public Services Ombudsman (Wales) Act 2005 s 13(4A) (added by Legal Services Act 2007 Sch 21 para 151(b)).

6 Public Services Ombudsman (Wales) Act 2005 s 13(4) (amended by Legal Services Act 2007 Sch 21 para 151(a)).

7 Public Services Ombudsman (Wales) Act 2005 s 13(5).

8 Ibid s 13(6).

12. Information, documents, evidence and facilities

For the purposes of an investigation the Ombudsman may require a person he thinks is able to supply information or produce a document relevant to the investigation to do so¹. For the purposes of an investigation the Ombudsman has the same powers as the High Court in respect of (1) the attendance and examination of witnesses (including the administration of oaths and affirmations and the examination of witnesses abroad), and (2) the production of documents². For the purposes of an investigation the Ombudsman may require a person he thinks is able to supply information or produce a document relevant to the investigation to provide any facility he may reasonably require³. No person is to be compelled for the purposes of an investigation to give any evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the High Court⁴. No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or supplied to persons in Her Majesty's service, whether imposed by any enactment or rule of law, is to apply to the disclosure of information for the purposes of an investigation⁵. The Crown is not entitled in relation to an investigation to any privilege in respect of the production of documents or the giving of evidence that would otherwise be allowed by law in legal proceedings⁶.

1 Public Services Ombudsman (Wales) Act 2005 s 14(1).

2 Ibid s 14(2).

3 Ibid s 14(3).

4 Ibid s 14(4). Section 14(4) is subject to s 14(6): s 14(4).

5 Ibid s 14(5).

6 Ibid s 14(6).

13. Obstruction and contempt

If the Ombudsman is satisfied that the condition below¹ is met in relation to a person, he may issue a certificate to that effect to the High Court². The condition is that the person (1) without lawful excuse, has obstructed the discharge of any of the Ombudsman's functions under Part 2 of the Public Services Ombudsman (Wales) Act 2005³, or (2) has done an act in relation to an investigation which, if the investigation were proceedings in the High Court, would constitute contempt of court⁴. If the High Court is satisfied that the above condition is met in relation to the person, it may deal with him in any manner in which it could have dealt with him if he had committed contempt in relation to the High Court⁵.

1 Ie the condition in the Public Services Ombudsman (Wales) Act 2005 s 15(2).

2 Ibid s 15(1). If the Ombudsman issues a certificate under s 15(1), the High Court may inquire into the matter: s 15(4).

3 Ie ibid ss 2-34, Schs 2, 3.

4 Ibid s 15(2). But the condition in s 15(2) is not met in relation to a person merely because he has taken action such as is mentioned in s 13(6) (see PARA 49A.11): s 15(3).

5 Ibid s 15(5).

14. Reports of investigations

The Ombudsman must, after conducting an investigation into a complaint in respect of a listed authority¹ (1) prepare a report on his findings, and (2) send a copy of the report to all the appropriate persons². The Ombudsman may send a copy of the report to any other persons he thinks appropriate³. The Ombudsman may publish a report prepared under these provisions⁴ if, after taking account of the interests of the person aggrieved and any other persons he thinks appropriate, he considers it to be in the public interest to do so⁵. If a report prepared under these provisions (a) mentions the name of any person other than the listed authority in respect of which the complaint was made, or (b) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in his opinion, can be omitted without impairing the effectiveness of the report, that information must not be included in a version of the report sent to a person⁶ or published⁷.

1 As to listed authorities see PARA 49A.24.

2 Public Services Ombudsman (Wales) Act 2005 s 16(1). This is subject to s 21 (see PARA 49A.18): s 16(1). The appropriate persons are (1) the person who made the complaint; (2) the listed authority; (3) any other person who is alleged in the complaint to have taken or authorised the action complained of; (4) if the listed authority is a family health service provider in Wales (a) any Local Health Board with whom the authority had, at the time of the action which is the subject of the complaint, entered into a contract to provide the family health services which are under investigation; (b) any person to whom the authority had, at that time, undertaken to provide those services; (c) any person with whom the authority had, at that time, made arrangements for the provision of those services; (5) if the listed authority is an independent provider in Wales (i) any Welsh health service body with whom the authority had, at the time of the action which is the subject of the complaint, made arrangements for the provision of the services under investigation; (ii) any family health service provider in Wales with whom the authority had, at that time, made arrangements for the provision of those services; (6) the First Minister for Wales (unless the listed authority is itself the Welsh Assembly Government or is a local authority in Wales): s 16(2) (amended by the Government of Wales Act 2006 Sch 10 para 73). In the 2005 Act 'local authority in Wales' means a county council, county borough council or community council in Wales: s 41(1).

3 Ibid s 16(3).

4 Ie ibid s 16.

5 Ibid s 16(4). The Ombudsman may supply a copy of a report published under s 16(4), or any part of such a report, to any person who requests it: s 16(5). The Ombudsman may charge a reasonable fee for supplying a copy of a report, or part of a report, under s 16(5): s 16(6).

6 Ie under ibid s 16(1)(b) (see head (2) in the TEXT) or s 16(3).

7 Ibid s 16(7), referring to publication under s 16(4). This is subject to s 16(8): s 16(7). Section 16(7) does not apply in relation to a version of the report if, after taking account of the interests of the person aggrieved and any other persons he thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the report: s 16(8).

15. Publicising reports

If an investigation is conducted in respect of a listed authority¹ and the authority receives a copy of a report², the authority must make copies of that version of the report available for a period of at least three weeks (1) at one or more of the authority's offices, and (2) if the authority has a website, on the website³. Throughout that period of three weeks, any person may (a) inspect the copy of the report at the office or offices concerned at any reasonable time without payment; (b) make a copy of the report or any part of it at any reasonable time without payment; (c) require the authority to supply him with a copy of the report or any part of it, on payment of a reasonable sum if requested; (d) if the authority has a website, view the copy of the report on the website without payment⁴. Not later than two weeks after the copy of the report is received by the listed authority it must ensure that a notice is published in a newspaper circulating in the part of Wales in which the matter which is the subject of the report arose⁵. The notice must specify (i) the date on which the period of three weeks⁶ will begin, (ii) the office or offices at which a copy of the report can be inspected, and (iii) the address of the

authority's website (if any)⁷. The Ombudsman may give directions to listed authorities with regard to the discharge of their functions under these provisions⁸. The Ombudsman may direct that the above provisions⁹ are not to apply in relation to a particular report¹⁰.

Provision is made for the application of the above provisions¹¹ with modifications in relation to persons who are listed authorities by virtue of being family health service providers in Wales or independent providers in Wales¹².

1 As to listed authorities see PARA 49A.24.

2 Ie under the Public Services Ombudsman (Wales) Act 2005 s 16(1)(b): see PARA 49A.14 head (2).

3 Ibid s 17(1).

4 Ibid s 17(2). A person commits an offence if (1) he wilfully obstructs a person in the exercise of a right conferred by head (a), (b) or (d) in the text, or (2) he refuses to comply with a requirement under head (c) in the text: s 17(7). A person guilty of an offence under s 17(7) is liable on summary conviction to a fine not exceeding level 3 on the standard scale: s 17(8). As to the standard scale see PARA 39.

5 Ibid s 17(3).

6 Referred to in ibid s 17(1).

7 Ibid s 17(4).

8 Ie under ibid s 17: s 17(5). Directions under s 17(5) may relate (1) to a particular listed authority in respect of a particular report, or (2) generally to the discharge of functions under s 17 by all or any listed authorities: s 17(6). As to directions under the Public Services Ombudsman (Wales) Act 2005 generally see s 44 (amended by the Government of Wales Act 2006 Sch 10 para 85).

9 Ie 2005 Act s 17(1)-(4).

10 Ibid s 17(9). In deciding whether to give a direction under s 17(9), the Ombudsman must take into account (1) the public interest, (2) the interests of the person aggrieved, and (3) the interests of any other persons he thinks appropriate: s 17(10).

11 Ie ibid s 17.

12 See ibid s 18.

16. Action following receipt of a report

The following provisions¹ apply if, in a report² of an investigation in respect of a listed authority³, the Ombudsman concludes that the person aggrieved has sustained injustice or hardship in consequence of the matter investigated⁴. The listed authority must consider the report and notify the Ombudsman before the end of the permitted period⁵ of (1) the action it has taken or proposes to take in response to it, and (2) the period before the end of which it proposes to have taken that action (if it has not already done so)⁶.

1 Ie the Public Services Ombudsman (Wales) Act 2005 s 19.

2 Ie under ibid s 16: see PARA 49A.14.

3 As to listed authorities see PARA 49A.24.

4 2005 Act s 19(1).

5 The permitted period is (1) the period of one month beginning on the date on which the authority receives the report, or (2) any longer period specified by the Ombudsman in writing: ibid s 19(3).

6 Ibid s 19(2).

17. Non-action following receipt of a report

The following provisions are not yet in force.

If the Ombudsman is satisfied that the condition below¹ is met in relation to a listed authority², he may issue a certificate to that effect to the High Court³. The condition is that the listed authority has wilfully disregarded his report without lawful excuse⁴.

1 Ie the condition in the Public Services Ombudsman (Wales) Act 2005 s 20(2).

2 As to listed authorities see PARA 49A.24.

3 2005 Act s 20(1).

4 Ibid s 20(2).

18. Reports: alternative procedure

The following provisions¹ apply if, after the Ombudsman has conducted an investigation into a complaint in respect of a listed authority² (1) he concludes that the person aggrieved has not sustained injustice or hardship in consequence of the matter investigated, and (2) he is satisfied that the public interest does not require certain specified provisions³ to apply⁴. The following provisions also apply if, after the Ombudsman has conducted an investigation into a complaint in respect of a listed authority (a) he concludes that the person aggrieved has sustained injustice or hardship in consequence of the matter investigated, (b) the listed authority agrees to implement, before the end of the permitted period⁵, any recommendations he makes, and (c) he is satisfied that the public interest does not require certain specified provisions⁶ to apply⁷. The Ombudsman may decide to prepare a report on his findings under these provisions⁸. The Ombudsman may publish a report prepared under these provisions if, after taking account of the interests of the person aggrieved and any other persons he thinks appropriate, he considers it to be in the public interest to do so⁹. If a report prepared under these provisions (i) mentions the name of any person other than the listed authority in respect of which the complaint was made, or (ii) includes any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in his opinion, can be omitted without impairing the effectiveness of the report, that information must not be included in a version of the report sent to a person¹⁰ or published¹¹.

1 Ie the Public Services Ombudsman (Wales) Act 2005 s 21.

2 As to listed authorities see PARA 49A.24.

3 Ie the 2005 Act ss 16-19: see PARAS 49A.14-49A.16.

4 Ibid s 21(1).

5 The permitted period is (1) a period agreed between the Ombudsman, the listed authority and the person who made the complaint, or (2) if the Ombudsman thinks that no such agreement can be reached, the period specified by him in writing: *ibid* s 21(3).

6 Ie *ibid* ss 16-19.

7 Ibid s 21(2).

8 Ie under *ibid* s 21 instead of under s 16: s 21(4). If the Ombudsman decides to prepare a report under s 21, (1) ss 16-19 do not apply; (2) he must send a copy of the report to (a) the person who made the complaint; (b) the listed authority; (3) he may send a copy of the report to any other persons he thinks appropriate: s 21(5).

9 Ibid s 21(6). The Ombudsman may supply a copy of a report published under s 21(6), or any part of such a report, to any person who requests it: s 21(7). The Ombudsman may charge a reasonable fee for supplying a copy of a report, or part of a report, under s 21(7): s 21(8).

10 Under ibid s 21(5).

11 Ibid s 21(9), referring to publication under s 21(6). This is subject to s 21(10): s 21(9). Section 21(9) does not apply in relation to a version of the report if, after taking account of the interests of the person aggrieved and any other persons he thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in that version of the report: s 21(10).

19. Special reports

The Ombudsman may prepare a report¹ (a 'special report') if the following provisions² apply³. This provision⁴ applies if, in a report⁵, the Ombudsman has concluded that the person aggrieved has sustained injustice or hardship in consequence of the matter investigated and (1) the Ombudsman has not received the notification required⁶ before the end of the period permitted⁷, (2) he has received that notification but he is not satisfied with (a) the action which the listed authority⁸ has taken or proposes to take, or (b) the period before the end of which it proposes to have taken that action, or (c) he has received that notification but he is not satisfied that the listed authority has, before the end of the permitted period⁹, taken the action it proposed to take¹⁰. This provision¹¹ applies if the Ombudsman (i) has prepared a report¹², and (ii) is not satisfied that the listed authority has implemented his recommendations before the end of the permitted period¹³. This provision¹⁴ applies if (A) a complaint in respect of a listed authority has been resolved¹⁵, (B) in resolving the complaint, the Ombudsman has concluded that the person aggrieved has sustained injustice or hardship in consequence of the matter which is the subject of the complaint, (C) the listed authority has agreed to take particular action before the end of a particular period, and (D) the Ombudsman is not satisfied that the listed authority has taken that action before the end of the permitted period¹⁶. A special report must (aa) set out the facts on the basis of which the above provisions¹⁷ apply, and (bb) make such recommendations as the Ombudsman thinks fit with respect to the action which, in his opinion, should be taken to remedy the injustice or hardship to the person aggrieved, and to prevent similar injustice or hardship being caused in the future¹⁸.

Supplementary provision is made¹⁹.

1 le under the Public Services Ombudsman (Wales) Act 2005 s 22.

2 le ibid s 22(2), (4) or (6).

3 Ibid s 22(1).

4 le ibid s 22(2).

5 le under ibid s 16: see PARA 49A.14.

6 le under ibid s 19: see PARA 49A.16.

7 le under ibid s 19.

8 As to listed authorities see PARA 49A.24.

9 The permitted period for the purposes of head (c) is (1) the period referred to in the 2005 Act s 19(2)(b), or (2) any longer period specified by the Ombudsman in writing: s 19(3).

10 Ibid s 22(2).

11 le ibid s 22(4).

12 le under ibid s 21 (see PARA 49A.18) by virtue of s 21(2).

13 Ibid s 22(4). The permitted period for the purposes of head (ii) is (1) the period referred to in s 21(2)(b), or (2) any longer period specified by the Ombudsman in writing: s 22(5).

14 le ibid s 22(6).

15 le under ibid s 3: see PARA 49A.3.

16 Ibid s 22(6). The permitted period for the purposes of head (d) is (1) the period referred to in head (c), or (2) any longer period specified by the Ombudsman in writing: s 22(7).

17 le ibid s 22(2), (4) or (6).

18 Ibid s 22(8).

The Ombudsman must send a copy of a special report (1) if the special report is prepared because s 22(2) applies, to each person to whom a copy of the report under s 16 was sent under s 16(1)(b); (2) if the special report is prepared because s 22(4) or (6) applies, to the person who made the complaint and the listed authority: s 22(9). The Ombudsman may send a copy of a special report to any other persons he thinks appropriate: s 22(10).

19 See ibid s 23 (amended by the Government of Wales Act 2006 Sch 10 para 75).

20. Special reports relating to the Welsh Assembly Government etc

The following provisions¹ apply if a special report² is made in a case where the complaint was made in respect of the Welsh Assembly Government or the National Assembly for Wales Commission³. The relevant person⁴ must lay a copy of the report before the Assembly⁵.

1 le the Public Services Ombudsman (Wales) Act 2005 s 24.

2 In the 2005 Act 'special report' has the meaning given in s 22 (see PARA 49A.19): s 41(1).

3 Ibid s 24(1) (amended by the Government of Wales Act 2006 Sch 10 para 76).

4 le the First Minister for Wales (if the complaint was made in respect of the Welsh Assembly Government) or a member of the National Assembly for Wales Commission (if the complaint was made in respect of that Commission): 2005 Act s 24(2A) (added by the 2006 Act Sch 10 para 76).

5 2005 Act s 24(2).

21. Consultation and co-operation with other ombudsmen

The following provisions¹ apply if, in making a decision² or conducting an investigation, the Ombudsman forms the opinion that any matter which is the subject of the complaint or investigation could be the subject of an investigation by another specified ombudsman³. The Ombudsman must consult that ombudsman about the matter⁴. The Ombudsman may co-operate with that ombudsman in relation to the matter⁵. Consultation⁶, and co-operation⁷, may extend to anything relating to any matter the subject of the complaint or investigation, including in particular (1) the conduct of an investigation into the complaint; (2) the form, content and publication of a report of the investigation⁸. If the Ombudsman consults an ombudsman about a matter⁹, the Ombudsman and that ombudsman may (a) conduct a joint investigation into the matter; (b) prepare a joint report in relation to the investigation; (c) publish the joint report¹⁰.

Where it appears to the Ombudsman that there is a complaint in respect of a matter which he is entitled to investigate, and the matter is one which could also be the subject of an examination by the Commissioner for Older People in Wales¹¹, the Ombudsman must, if appropriate, inform the Commissioner about the matter, and consult him in relation to it¹². Where the Ombudsman so consults the Commissioner, he and the Commissioner may co-operate with each other in relation to the matter, conduct a joint investigation into the matter,

prepare and publish a joint report in relation to the investigation¹³. Where it appears to the Ombudsman that a complaint relates to or raises a matter which could be the subject of an examination by the Commissioner (the 'connected matter') he must, if appropriate, inform the Commissioner about the connected matter¹⁴. Where the Ombudsman considers that the complaint also relates to or raises a matter into which he is entitled to conduct an investigation himself ('the ombudsman matter'), he must also if he considers it appropriate inform the Commissioner about the Ombudsman's proposals for conducting an investigation into the complaint, and consult the Commissioner about those proposals¹⁵. Where the Ombudsman and the Commissioner consider that they are entitled to investigate, respectively, the ombudsman matter and the connected matter they may co-operate with each other in the separate investigation of each of those matters, act together in the investigation of those matters, and prepare and publish a joint report containing their respective conclusions in relation to the matters they have each investigated¹⁶. Where the Ombudsman considers that the complaint does not relate to or raise a matter into which he is entitled to conduct an investigation himself, and that it is appropriate to do so, he must inform the person who initiated the complaint about how to secure the referral of the connected matter to the Commissioner¹⁷.

1 Ie the Public Services Ombudsman (Wales) Act 2005 s 25.

2 Ie under *ibid* s 2(5): see PARA 49A.2.

3 Ie by an ombudsman mentioned in *ibid* s 25(7): s 25(1). The ombudsmen referred to in s 25(1) are (1) the Parliamentary Commissioner for Administration; (2) the Health Service Commissioner for England; (3) a Local Commissioner; (4) the Scottish Public Services Ombudsman; (5) a housing ombudsman appointed in accordance with a scheme approved under the Housing Act 1996 s 51; (6) the Children's Commissioner for Wales: s 25(7). In the Public Services Ombudsman (Wales) Act 2005 'Local Commissioner' has the meaning given in the Local Government Act 1974 s 23(3) (see LOCAL GOVERNMENT vol 69 (2009) PARA 839): 2005 Act s 41(1). The Welsh Ministers may by order amend s 25(7) by (a) adding a person; (b) omitting a person; (c) changing the description of a person: s 25(8) (s 25(8), (9) amended, s 25(10) added by the Government of Wales Act 2006 Sch 10 para 77). An order under the 2005 Act s 25(8) may add a person to s 25(7) only if the person appears to the Welsh Ministers to have functions relating to the investigation of complaints: s 25(9) (as so amended). No order is to be made under s 25(8) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the National Assembly for Wales: s 25(10) (as so added). As to orders under the 2005 Act generally see s 44 (amended by the Government of Wales Act 2006 Sch 10 para 85).

4 2005 Act s 25(2).

5 *Ibid* s 25(3).

6 Ie under *ibid* s 25(2).

7 Ie under *ibid* s 25(3).

8 *Ibid* s 25(4).

9 Ie a matter under *ibid* s 25(2).

10 *Ibid* s 25(5). Section 25(5) does not apply if the ombudsman consulted under s 25(2) is the Scottish Public Services Ombudsman: s 25(6).

11 As to the Commissioner see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1024A.

12 2005 Act s 25A(1), (2) (ss 25A, 25B added by Commissioner for Older People (Wales) Act 2006 Sch 4 para 2(2)).

13 2005 Act s 25A(3).

14 *Ibid* s 25B(1), (2).

15 *Ibid* s 25B(3).

16 *Ibid* s 25B(4).

17 Ibid s 25B(5).

22. Disclosure of information

The information to which the following provisions¹ apply is (1) information obtained by the Ombudsman, a member of his staff or another person acting on his behalf or assisting him in the discharge of any of his functions (a) in deciding whether to begin an investigation, (b) in the course of an investigation, or (c) in resolving a complaint²; (2) information obtained from the Commissioner for Older People in Wales³; (3) information obtained from another specified ombudsman⁴; (4) information obtained from the Information Commissioner⁵. The information must not be disclosed except (i) for the purposes of deciding whether to begin an investigation; (ii) for the purposes of an investigation; (iii) for the purposes of resolving a complaint⁶; (iv) for the purposes of a statement or report made in relation to a complaint or investigation; (v) for the purposes of any provision relating to the consultation and co-operation with other ombudsmen⁷; (vi) for the purposes of proceedings for (A) an offence under the Official Secrets Acts 1911 to 1989 alleged to have been committed by the Ombudsman, a member of his staff or other person acting on his behalf or assisting him in the discharge of any of his functions; (B) an offence of perjury alleged to have been committed in the course of an investigation; (vii) for the purposes of an inquiry with a view to the taking of proceedings mentioned in head (vi) above; (viii) for the purposes of proceedings relating to obstruction and contempt⁸; (ix) in the case of information to the effect that a person is likely to constitute a threat to the health or safety of one or more persons, to any person to whom the Ombudsman thinks it should be disclosed in the public interest; (x) in the case of certain specified information⁹, to the Information Commissioner¹⁰.

1 Ibid the Public Services Ombudsman (Wales) Act 2005 s 26.

2 Ibid under ibid s 3: see PARA 49A.3.

3 Ibid by virtue of any provision of ibid s 25A or 25B (see PARA 49A.21) or the Commissioner for Older People (Wales) Act 2006 s 16 or 17.

4 Ibid information obtained from an ombudsman mentioned in the 2005 Act s 25(7) (see PARA 49A.21) by virtue of any provision of s 25 or a corresponding provision in an enactment relating to any of those ombudsmen.

5 Ibid s 26(1) (amended by the 2006 Act Sch 4 para 2(3)), referring to information obtained by virtue of the Freedom of Information Act 2000 s 76 (see CONFIDENCE AND DATA PROTECTION vol 8(1) (Reissue) PARA 615): 2005 Act s 26(1). No person may be called on to give evidence in any proceedings (other than proceedings mentioned in s 26(2)) of information obtained by him as mentioned in head (1) or (2) in the text: s 26(6).

6 Ibid under ibid s 3: see PARA 49A.3.

7 Ibid any provision of ibid s 25: see PARA 49A.21.

8 Ibid under ibid s 15: see PARA 49A.13.

9 Ibid information to which ibid s 26(3) applies. Section 26(3) applies to information if it appears to the Ombudsman to relate to (1) a matter in respect of which the Information Commissioner could exercise a power conferred by an enactment mentioned in s 26(4), or (2) the commission of an offence mentioned in s 26(5): s 26(3). The enactments are the Data Protection Act 1998 Pt 5 (ss 40-50), s 48, the Freedom of Information Act 2000 Pt 4 (ss 50-56): 2005 Act s 26(4). The offences are those under any provision of the 1998 Act other than Sch 9 para 12 (obstruction of execution of warrant) and under the 2000 Act s 77 (offence of altering etc records with intent to prevent disclosure): 2005 Act s 26(5).

10 Ibid s 26(2).

23. Disclosure prejudicial to safety of State or contrary to public interest

A minister of the Crown may give notice to the Ombudsman with respect to (1) any document or information specified in the notice, or (2) any class of document or information so specified, that, in the opinion of the Minister, the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of the State or otherwise contrary to the public interest¹.

¹ Public Services Ombudsman (Wales) Act 2005 s 27(1). If a notice is given under s 27(1), nothing in the 2005 Act is to be construed as authorising or requiring the Ombudsman, a member of his staff or another person acting on his behalf or assisting him in the discharge of any of his functions to disclose to any person or for any purpose any document or information, or class of document or information, specified in the notice: s 27(2).

24. Listed authorities

Specified persons¹ are listed authorities for the purposes of the Public Services Ombudsman (Wales) Act 2005².

¹ The persons specified in the Public Services Ombudsman (Wales) Act 2005 Sch 3 (amended by the Government of Wales Act 2006 Sch 10 para 88; the Climate Change Act 2008 Sch 1 para 35; the National Council for Education and Training for Wales (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3238; the Public Services Ombudsman for Wales (Jurisdiction and Transitional Provisions and Savings) Order 2006, SI 2006/363).

² 2005 Act s 28(1). The Welsh Ministers may by order amend Sch 3 by (1) adding a person; (2) omitting a person; (3) changing the description of a person: s 28(2) (s 28(2), (4) amended, s 25(4A) added by the Government of Wales Act 2006 Sch 10 para 78). An order under the 2005 Act s 28(2) adding a person to Sch 3 may provide for the 2005 Act to apply to the person with the modifications specified in the order: s 28(3). Before making an order under s 28(2), the Welsh Ministers must consult the Ombudsman and any other persons it thinks appropriate: s 28(4) (as so amended). No order is to be made under s 28(2) unless a draft of the statutory instrument containing it has been laid before, and approved by a resolution of, the National Assembly for Wales: s 28(4A) (as so added). As to orders under the 2005 Act generally see s 44 (amended by the Government of Wales Act 2006 Sch 10 para 85).

The 2005 Act ss 29 and 30 (amended by the Government of Wales Act 2006 Sch 10 paras 79, 80) contain further restrictions on the power in the 2005 Act s 28(2): s 28(5).

25. Power to issue guidance

The Ombudsman may issue to one or more listed authorities¹ such guidance about good administrative practice as he thinks appropriate². Before issuing guidance under these provisions³ the Ombudsman must consult such listed authorities, or persons appearing to him to represent them, as he thinks appropriate⁴. If guidance issued under these provisions is applicable to a listed authority, the authority must have regard to the guidance in discharging its functions⁵. In conducting an investigation in respect of a listed authority, the Ombudsman may have regard to the extent to which the authority has complied with any guidance issued under these provisions which is applicable to the authority⁶. The Ombudsman may publish any guidance issued under these provisions in any manner that he thinks appropriate, including in particular by putting the guidance in an annual or extraordinary report⁷. Guidance issued under these provisions may contain different provision for different purposes⁸. Guidance issued under these provisions must not (1) mention the name of any person other than the listed authorities to which it is applicable or a listed authority in respect of which a complaint has been made or referred to the Ombudsman under the Public Services Ombudsman (Wales) Act 2005, or (2) include any particulars which, in the opinion of the Ombudsman, are likely to identify any such person and which, in his opinion, can be omitted without impairing the effectiveness of the guidance⁹.

- 1 As to listed authorities see PARA 49A.24.
- 2 Public Services Ombudsman (Wales) Act 2005 s 31(1).
- 3 *Ie* *ibid* s 31.
- 4 *Ibid* s 31(2).
- 5 *Ibid* s 31(3).
- 6 *Ibid* s 31(4).
- 7 *Ibid* s 31(5). In the Public Services Ombudsman (Wales) Act 2005 'annual report' and 'extraordinary report' have the meanings given in Sch 1 para 14: s 41(1). As to Sch 1 see PARA 49A.1.
- 8 *Ibid* s 31(6).
- 9 *Ibid* s 31(7). Section 31(7) is subject to s 31(8): s 31(7). Section 31(7) does not apply if, after taking account of the interests of any persons he thinks appropriate, the Ombudsman considers it to be in the public interest to include that information in the guidance: s 31(8).

26. Protection from defamation claims

For the purposes of the law of defamation, the following are absolutely privileged (1) the publication of a matter by the Ombudsman, a member of his staff or another person acting on his behalf or assisting him in the discharge of any of his functions, in the discharge of any of the Ombudsman's functions under the Public Services Ombudsman (Wales) Act 2005; (2) the publication of a matter by a person in the discharge of functions relating to the publicising of reports¹; (3) the publication of a matter in connection with a complaint made or referred to the Ombudsman under Part 2 of the Public Services Ombudsman (Wales) Act 2005², in communications between (a) a listed authority³, a member or co-opted member of a listed authority, an officer or member of the staff of a listed authority or another person acting on behalf of a listed authority or assisting it in the discharge of any of its functions, and (b) the Ombudsman, a member of his staff or another person acting on his behalf or assisting him in the discharge of any of his functions; (4) the publication of any matter in connection with a complaint made or referred (or to be made or referred) by or on behalf of a person to the Ombudsman under Part 2 of the 2005 Act, in communications between a person and an Assembly member; (5) the publication of any matter in connection with a complaint made or referred (or to be made or referred) by or on behalf of a person to the Ombudsman under Part 2 of the 2005 Act, in communications between the person and the Ombudsman, a member of his staff or another person acting on his behalf or assisting him in the discharge of any of his functions⁴; and (6) any statement, whether written or oral, made by a member of staff of the Ombudsman or another person acting on behalf of the Ombudsman or assisting him, in the connection with the exercise of his functions under Part 3 of the Local Government Act 2000⁵.

- 1 Under the Public Services Ombudsman (Wales) Act 2005 s 17 (see PARA 49A.15).
- 2 *Ie* *ibid* ss 2-34, Schs 2, 3.
- 3 As to listed authorities see PARA 49A.24.
- 4 2005 Act s 32.
- 5 Public Services Ombudsman for Wales (Standards Investigations) Order 2006, SI 2006/949, art 5.

27. Publicity for complaints procedures

A listed authority¹ must take reasonable steps to provide information to the public about (1) the right to make a complaint to the Ombudsman in respect of the authority, (2) the right of the

authority to refer a complaint to the Ombudsman, (3) the time limits for making and referring complaints to the Ombudsman, and (4) how to contact the Ombudsman². In particular, information about the matters specified above³ must be included in or provided with (a) any document published by the listed authority which contains information about (i) relevant services⁴ provided by the authority to members of the public, or (ii) the procedures of the authority for dealing with complaints, and (b) any document issued by the listed authority in responding to a complaint made to it by a person who might be entitled to make the complaint to the Ombudsman⁵. The Ombudsman may issue guidance to listed authorities with respect to the discharge of their functions under the above provisions⁶.

1 As to listed authorities see PARA 49A.24.

2 Public Services Ombudsman (Wales) Act 2005 s 33(1).

3 Ie specified in ibid s 33(1).

4 'Relevant service' has the meaning given in ibid s 7 (see PARA 49A.5): s 33(5).

5 Ibid s 33(2).

6 Ibid s 33(3). A listed authority must have regard to guidance given by the Ombudsman under s 33(3): s 33(4).

28. Compensation for the person aggrieved

The following provisions¹ apply if (1) a complaint in respect of a matter is made or referred to the Ombudsman, and (2) the complaint is one which the Ombudsman has power to investigate². The listed authority³ in respect of which the complaint is made may make a payment to, or provide any other benefit for, the person aggrieved in respect of the matter which is the subject of the complaint⁴. It is immaterial for the purposes of these provisions⁵ that the Ombudsman has decided not to investigate the complaint, has discontinued an investigation of the complaint, has not yet completed an investigation of the complaint or has not upheld the complaint⁶.

1 Ie the Public Services Ombudsman (Wales) Act 2005 s 34.

2 Ibid s 34(1), referring to the power to investigate under s 2 (see PARA 49A.2).

3 As to listed authorities see PARA 49A.24.

4 2005 Act s 34(2). The power in s 34(2) does not affect any other power of the listed authority to make the payment or provide the benefit: s 34(4).

5 Ie ibid s 34.

6 Ibid s 34(3).

29. Conduct of local government members and employees

Functions are conferred on the Ombudsman in relation to the conduct of local government members and employees¹.

1 See Public Services Ombudsman (Wales) Act 2005 s 35, Sch 4.

30. Abolition of existing bodies and offices and transfer of property, staff etc

The Commission for Local Administration in Wales is abolished¹. The office of Welsh Administration Ombudsman is abolished². The office of Health Service Commissioner for Wales is abolished³. The office of Social Housing Ombudsman for Wales is abolished⁴.

Provision is made for the transfer of property, staff etc to the Public Services Ombudsman for Wales⁵.

1 Public Services Ombudsman (Wales) Act 2005 s 36(1). As to the Commission for Local Administration in Wales see PARA 49.

2 Ibid s 36(2). As to the office of Welsh Administration Ombudsman see PARA 45.

3 Ibid s 36(3). As to the office of Health Service Commissioner for Wales see HEALTH SERVICES vol 54 (2008) PARA 641.

4 Ibid s 36(4). As to the office of Social Housing Ombudsman for Wales see HOUSING.

5 See ibid s 37, Sch 5.

31. Undetermined complaints

If (1) a complaint has been made or referred to an existing Welsh ombudsman¹ before the commencement date², and (2) the complaint has not been determined by that ombudsman before that date, on and after the commencement date, the relevant existing enactment³ continues to apply for the purposes of the complaint despite the other provisions of the Public Services Ombudsman (Wales) Act 2005⁴.

If (a) a complaint could (but for the other provisions of the Public Services Ombudsman (Wales) Act 2005) have been made or referred to an existing Welsh ombudsman, and (b) the complaint relates to action taken by a person before the commencement date, on and after the commencement date, the relevant existing enactment continues to apply for the purposes of enabling the complaint to be made or referred, and for the purposes of the complaint if made or referred, despite the other provisions of the Public Services Ombudsman (Wales) Act 2005⁵.

1 In the Public Services Ombudsman (Wales) Act 2005 s 38 'existing Welsh ombudsman' means (1) the Welsh Administration Ombudsman; (2) the Health Service Commissioner for Wales; (3) a Local Commissioner who is a member of the Commission for Local Administration in Wales; (4) the Social Housing Ombudsman for Wales: s 38(6).

2 In ibid s 38 'the commencement date' means the date on which s 38 comes into force (ie 1 April 2006: see SI 2005/2800): 2005 Act s 38(6).

3 In ibid s 38 'the relevant existing enactment' (1) if the relevant existing Welsh ombudsman is the Welsh Administration Ombudsman, means the Government of Wales Act 1998 Sch 9; (2) if the relevant existing Welsh ombudsman is the Health Service Commissioner for Wales, means the Health Service Commissioners Act 1993; (3) if the relevant existing Welsh ombudsman is a Local Commissioner, means the Local Government Act 1974 Pt 3; (4) if the relevant existing Welsh ombudsman is the Social Housing Ombudsman for Wales, means of the Housing Act 1996 Pt 1: 2005 Act s 38(6). 'The relevant existing Welsh ombudsman' (a) in relation to a complaint within s 38(1), means the existing Welsh ombudsman to whom the complaint was made or referred; (b) in relation to a complaint within s 38(3), means the existing Welsh ombudsman to whom the complaint could have been made or referred: s 38(6).

4 Ibid s 38(1), (2). See further NOTE 5.

5 Ibid s 38(3), (4).

As applied by s 38(2) and (4), the relevant existing enactment has effect as if for references to the existing Welsh ombudsman in relation to which that enactment applies there were substituted references to the Ombudsman: s 38(5).

32. Former health care providers and social landlords: modifications

The Welsh Ministers may by regulations¹ provide for the Public Services Ombudsman (Wales) Act 2005 to apply with the modifications specified in the regulations to persons who are (1) former family health service providers in Wales²; (2) former independent providers in Wales³; (3) former social landlords in Wales⁴.

1 As to regulations under the Public Services Ombudsman (Wales) Act 2005 generally see s 44 (amended by the Government of Wales Act 2006 Sch 10 para 85).

2 'Former family health service provider in Wales' means a person who (1) at the relevant time, provided family health services of a particular description, and (2) subsequently ceased to provide services of that description (whether or not he has later started to provide them again): 2005 Act s 42(2). 'The relevant time' is the time of action which is the subject of a complaint under the 2005 Act: s 42(5). No regulations are to be made under s 42(5) unless a draft of the statutory instrument containing them has been laid before, and approved by a resolution of, the National Assembly for Wales: s 42(6) (added by the Government of Wales Act 2006 Sch 10 para 83(4)).

3 'Former independent provider in Wales' means a person who (1) at the relevant time, provided services of a particular description in Wales under arrangements with a Welsh health service body or a family health service provider in Wales, (2) was not a Welsh health service body or a family health service provider in Wales at that time, and (3) subsequently ceased to provide services of that description (whether or not he has later started to provide them again): 2005 Act s 42(3).

4 Ibid s 42(1) (amended by the Government of Wales Act 2006 Sch 10 para 83(1)). 'Former social landlord in Wales' means a person who (1) at the relevant time (a) was registered as a social landlord in the register maintained by the Welsh Ministers under the Housing Act 1996 s 1 (or in the register previously maintained under s 1 by the National Assembly for Wales constituted by the Government of Wales Act 1998 or the Welsh Ministers, the Secretary of State or Housing for Wales), or (b) was registered with Housing for Wales, the Secretary of State or the National Assembly for Wales constituted by the Government of Wales Act 1998 or the Welsh Ministers and owned or managed publicly-funded dwellings, and (2) subsequently (i) ceased to be registered as mentioned in head (1)(a) or (b) (whether or not he later became so registered again), or (ii) ceased to own or manage publicly-funded dwellings (whether or not he later did so again): 2005 Act s 42(4) (amended by the Government of Wales Act 2006 Sch 10 para 83(3)).

UPDATE

46-49 The Commissioners for Local Administration

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/3. NON-JUDICIAL REDRESS IN RESPECT OF ADMINISTRATIVE ACTION/(5) THE STANDARDS BOARD FOR ENGLAND/50. The Standards Board for England.

(5) THE STANDARDS BOARD FOR ENGLAND

50. The Standards Board for England.

The Standards Board for England¹ consists of not less than three members appointed by the Secretary of State². A person is disqualified for being appointed as or for being a member of the Standards Board if he is disqualified for being or becoming a member of a local authority or a member of a relevant authority³. Members of the Standards Board hold and vacate office in

accordance with the terms of their appointments⁴ but the Secretary of State may remove a member of the Standards Board from office if he considers that that person is unable to discharge the functions of his office or has not complied with the terms of his appointment⁵. The Standards Board may appoint a chief executive (with the consent of the Secretary of State) and such other employees as it considers necessary for the purposes of the Standards Board, its ethical standards officers, the Adjudication Panel for England and its tribunals to exercise their functions⁶. However, no employee of the Standards Board is to be employed for the purposes of assisting both the investigations of any ethical standards officer and assisting the Adjudication Panel for England and its tribunals to perform their functions⁷.

1 The Standards Board for England is established by the Local Government Act 2000 s 57, Sch 4. See further LOCAL GOVERNMENT vol 69 (2009) PARA 243.

2 See ibid s 57(2). The Secretary of State must appoint one member to be chairman and one to be deputy chairman of the Standards Board: s 57(6), Sch 4 para 4. As to the Secretary of State see para 13 note 11 ante.

3 Ibid Sch 4 para 3. As to disqualification for being or becoming a member of an authority see LOCAL GOVERNMENT vol 69 (2009) PARA 243. Members of the House of Commons are disqualified for membership of the Standards Board: see the House of Commons Disqualification Act 1975 Sch 1 Pt II (amended by the Local Government Act 2000 Sch 4 para 18).

4 Local Government Act 2000 Sch 4 para 5(1).

5 Ibid Sch 4 para 5(3).

6 Ibid Sch 4 para 6.

7 Ibid Sch 4 para 6.

UPDATE

50 The Standards Board for England

TEXT AND NOTES--As to delegation of functions see Local Government Act 2000 Sch 4 para 9A; and LOCAL GOVERNMENT vol 69 (2009) PARA 243.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/3. NON-JUDICIAL REDRESS IN RESPECT OF ADMINISTRATIVE ACTION/(5) THE STANDARDS BOARD FOR ENGLAND/51. Allegations of failure to comply with an authority's code of conduct.

51. Allegations of failure to comply with an authority's code of conduct.

A person may make a written allegation to the Standards Board for England¹ that a member or co-opted member² or former member or co-opted member of relevant authorities³ has failed to comply with the authority's code of conduct. These relevant authorities must adopt a code as regards the conduct which is expected of members and co-opted members⁴. Members and co-opted members of a relevant authority must give a written undertaking to the authority that, in performing their functions, they will observe the authority's code of conduct⁵. The Standards Board may itself issue guidance to relevant authorities in relation to the conduct of their members and the appointment of monitoring officers and may arrange for such guidance to be made public⁶.

If the Standards Board considers that a written allegation which has been made to it should be investigated it must refer the case to an ethical standards officer appointed by the Standards

Board⁷. If the Standards Board considers that an allegation should not be investigated, it must take reasonable steps to notify in writing the person who made the allegation⁸.

Ethical standards officers are appointed by the Standards Board to investigate cases referred to them by the Standards Board and other cases in which they consider that a member or co-opted member (or former member or co-opted member) of a relevant authority in England has failed, or may have failed, to comply with the authority's code of conduct and which has come to their attention as a result of the investigation of a written allegation referred to them by the Standards Board⁹. An investigation by an ethical standards officer will determine which of the following four findings is appropriate: (1) that there is no evidence of any failure to comply with the code of conduct of the relevant authority concerned; (2) that no action needs to be taken in respect of the matters which are the subject of investigation; (3) that the matters which are the subject of the investigation should be referred to the monitoring officer of the relevant authority; or (4) that the matters which are the subject of the investigation should be referred to the president of the Adjudication Panel for England for adjudication by a case tribunal or interim case tribunal¹⁰.

1 The Standards Board for England is established by the Local Government Act 2000 s 57, Sch 4.

2 A co-opted member means a person who is not a member of the authority but who is a member of any committee or sub-committee of the authority or is a member of, and represents the authority on, any joint committee or joint sub-committee of the authority and who is entitled to vote on any question which falls to be decided at any meeting of that committee or sub-committee: *ibid* s 49(7).

3 'Relevant authority' means a county council, a county borough council, a district council, a London borough council, a parish council, a community council, the Greater London Authority, the Metropolitan Police Authority, the London Fire and Emergency Planning Authority, the Common Council of the City of London in its capacity as a local authority or police authority, the Council of the Isles of Scilly, a fire authority constituted by a combination scheme under the Fire Services Act 1947, a police authority, a joint authority established by the Local Government Act 1985 Pt IV (ss 23-42), the Broads Authority, and a national park authority established under the Environment Act 1995 s 63: Local Government Act 2000 s 49(6).

4 See *ibid* s 51; and LOCAL GOVERNMENT vol 69 (2009) PARA 235. As to codes of conduct see LOCAL GOVERNMENT vol 69 (2009) PARA 232 et seq.

5 See *ibid* s 52; and LOCAL GOVERNMENT vol 69 (2009) PARA 236. For the role of a relevant authority's standards committee in promoting and maintaining high standards of conduct and in assisting members and co-opted members to observe the authority's code of conduct see ss 53-55; and LOCAL GOVERNMENT vol 69 (2009) PARAS 238-240.

6 See *ibid* s 57(5); and LOCAL GOVERNMENT vol 69 (2009) PARA 243.

7 *Ibid* s 58(2).

8 *Ibid* s 58(3).

9 *Ibid* s 59(1).

10 See *ibid* s 59(3), (4). As to adjudications see ss 75-80; and LOCAL GOVERNMENT vol 69 (2009) PARA 278 et seq. For the role of the Adjudication Panel for England, case tribunals and interim case tribunals see LOCAL GOVERNMENT vol 69 (2009) PARA 278 et seq.

UPDATE

51 Allegations of failure to comply with an authority's code of conduct

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 3--Fire Services Act 1947 replaced by Fire and Rescue Services Act 2004. For 'a fire authority ... Fire Services Act 1947' read 'a fire and rescue authority constituted by a scheme under the 2004 Act s 2 or a scheme to which s 4 applies'; and definition of 'relevant authority' amended: Local Government Act 2000 s 49(6) (amended by 2004 Act Sch 1 para 94; Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 93).

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52. Functions of ethical standards officers.

An ethical standards officer to whom an allegation has been referred¹ may cease an investigation at any stage before its completion and refer the matters which are the subject of an investigation to the monitoring officer of the relevant authority² concerned³. An investigation into a member or former member of a relevant authority may not be carried out by an ethical standards officer who has been a member of that authority (or any of its committees) at any time within the last five years⁴. Ethical standards officers must declare to the Standards Board for England⁵ any direct or indirect interest in any matters referred to them and take no part in any investigation of such a matter⁶.

An ethical standards officer may determine the procedure for conducting an investigation subject to the requirement that the person being investigated must be given an opportunity to comment on any allegation made against him⁷. An ethical standards officer may reimburse the costs of those who attend or provide information for the purposes of his investigation⁸. The conduct of an investigation by an ethical standards officer does not affect the ability of a relevant authority to take action in respect of the matters being investigated and where a member has moved to another authority, both authorities may take action⁹. An ethical standards officer, or a person authorised by him, has a right of access at all reasonable times to every document relating to a relevant authority which appears to him to be necessary for the purpose of conducting an investigation¹⁰. A person from whom an ethical standards officer makes inquiries or seeks information or explanations is required to co-operate with the investigation¹¹. A relevant authority is required to provide an ethical standards officer with every facility and all information which he reasonably requires for the purpose of conducting his investigation¹². The duty to provide information extends to communications with government departments¹³, but it does not extend to the Parliamentary Commissioner, a local commissioner or the Health Service Commissioner¹⁴. Ethical standards officers may obtain advice during the course of an investigation and may pay for this advice¹⁵.

Information obtained by an ethical standards officer may only be disclosed where at least one of the following conditions is met: (1) where the disclosure is made for the purposes of enabling the Standards Board, an ethical standards officer, the Commission for Local Administration in Wales, a local commissioner in Wales or the president, deputy president or any tribunal of either of the adjudication panels to perform their functions; (2) where the person to whom the information relates has consented to its disclosure; (3) where the information has previously been disclosed to the public with lawful authority; (4) where the disclosure is for the purposes of criminal proceedings in any part of the United Kingdom and the information in question was not obtained under the ethical standards officer's power to require information; or (5) where the disclosure is made to the Audit Commission for the purposes of any functions of the Audit Commission or an auditor in respect of these functions¹⁶. The Secretary of State¹⁷ or a relevant

authority may prevent the disclosure of documents where they give notice that the disclosure of such documents would be contrary to the public interest¹⁸.

Where an ethical standards officer concludes that there is no evidence of any failure to comply with the code of conduct or where no action needs to be taken in respect of the matters which are the subject of the investigation¹⁹, he may produce a report and may provide a summary of the report to newspapers circulating in the area of the relevant authority concerned²⁰. If a report is produced, a copy must be sent to the monitoring officer of the relevant authority²¹. If the ethical standards officer does not produce a report, he must inform the monitoring officer of the relevant authority concerned of the outcome of the investigation²². Where an ethical standards officer concludes that the matters which are the subject of the investigation should be referred either to the monitoring officer of the relevant authority or to the president of the Adjudication Panel for England²³, he must produce a report and copies of this report must be sent to the monitoring officer of the relevant authority concerned or to the president of the Adjudication Panel for England as appropriate²⁴. An ethical standards officer's report may cover more than one investigation²⁵. An ethical standards officer must inform any person who is the subject of an investigation and take reasonable steps to inform any person who made an allegation which gave rise to the investigation of the outcome of the investigation²⁶. An interim report may be issued during an investigation if an ethical standards officer considers that it would be in the public interest to do so²⁷. Interim reports may recommend that the person being investigated should be immediately suspended or partially suspended from being a member of the relevant authority or any of its committees or sub-committees for up to six months²⁸. Where an ethical standards officer recommends suspension in an interim report he must refer the matters which are the subject of the report to the president of the Adjudication Panel for England for adjudication by an interim case tribunal²⁹.

1 See para 51 ante.

2 For the meaning of 'relevant authority' see para 51 note 3 ante.

3 Local Government Act 2000 s 60(2). Where the investigation is in respect of a former member or co-opted member of an authority who is now a member of a second authority the investigation may be referred to the monitoring officer of the second authority: s 60(3). The Secretary of State may by regulations make provision for the referral of investigations from ethical standards officers to monitoring officers: see s 66; and LOCAL GOVERNMENT VOL 69 (2009) PARA 258.

4 Ibid s 60(4).

5 See para 51 ante.

6 Local Government Act 2000 s 60(5).

7 Ibid s 61(1), (2).

8 Ibid s 61(3).

9 Ibid s 61(4), (5).

10 Ibid s 62(1).

11 See ibid s 62(2), (5), (6), (9). It is an offence to fail to provide an ethical standards officer with such information, documents or other evidence as he requires as part of his investigation: see s 62(10), (11).

12 Ibid s 62(3).

13 See ibid s 62(4)-(6).

14 Ibid s 62(7). As to the Parliamentary Commissioner see paras 41-44 ante. As to the local commissioners see paras 46-49 ante. As to the Health Service Commissioners see para 54 post.

15 Ibid s 62(8).

16 See *ibid* s 63. It is an offence to disclose documents in circumstances where one of these conditions has not been satisfied: s 63(4). Any statement (whether oral or written) made by an ethical standards officer in connection with the exercise of his functions is absolutely privileged for the purposes of the law of defamation: Sch 4 para 11. As to the Audit Commission see LOCAL GOVERNMENT vol 69 (2009) PARA 744 et seq.

17 As to the Secretary of State see para 13 note 11 ante.

18 Local Government Act 2000 s 63(2).

19 I.e. a finding under *ibid* s 59(4)(a), (b).

20 *Ibid* s 64(1)(a), (b).

21 *Ibid* s 64(1)(c).

22 *Ibid* s 64(1)(d).

23 I.e. a finding under *ibid* s 59(4)(c), (d). For reports where the member being investigated has moved to another relevant authority see s 64(4); and LOCAL GOVERNMENT vol 69 (2009) PARA 255.

24 See *ibid* s 64(2), (3).

25 *Ibid* s 64(5).

26 *Ibid* s 64(6).

27 *Ibid* s 65(1).

28 See *ibid* s 65(3). See further LOCAL GOVERNMENT vol 69 (2009) PARA 256.

29 *Ibid* s 65(4). As to the role of the Adjudication Panel for England and its tribunals in adjudication of the matters referred by the ethical standards officers see the Local Government Act 2000 Pt III Ch IV (ss 75-80); and LOCAL GOVERNMENT vol 69 (2009) PARA 278 et seq.

UPDATE

52 Functions of ethical standards officers

TEXT AND NOTE 16--Also, head (6) where the disclosure is made to the Auditor General for Wales for the purposes of any of his functions or of an auditor under the Public Audit (Wales) Act 2004 Pt 2 (ss 12-59) (see LOCAL GOVERNMENT vol 69 (2009) PARA 801 et seq); Local Government Act 2000 s 63(1) (amended by 2004 Act Sch 2 para 54).

2000 Act s 63(1) further amended: Local Government and Public Involvement in Health Act 2007 s 191(4) (partly in force: SI 2008/172).

These provisions apply in respect of standards committees and appeals tribunals in the performance of certain functions in modified form: see Local Authorities (Code of Conduct) (Local Determination) Regulations 2003, SI 2003/1483 (amended by SI 2004/2617, SI 2008/1085).

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53. Functions of the Standards Board for England performed by the Commission for Local Administration in Wales.

The functions performed by the Standards Board for England¹ are performed in Wales by the Commission for Local Administration in Wales². The investigative, reporting and referral functions of ethical standards officers³ may, by regulations made by the National Assembly for Wales⁴, be performed by a local commissioner in Wales⁵. In particular, a local commissioner in Wales may make references to the president of the Adjudication Panel for Wales for adjudication by a case tribunal or interim case tribunal as appropriate⁶.

1 See para 51 ante.

2 See the Local Government Act 2000 Pt III Ch III (ss 68-74) which provides for the investigations of allegations of failure to comply with an authority's code of conduct in Wales. The functions of the Commission for Local Administration in Wales are to be conferred by regulations made by the National Assembly for Wales: see s 68(3)(b); and LOCAL GOVERNMENT vol 69 (2009) PARA 267. As to the Commission for Local Administration in Wales see para 49 ante.

3 See paras 51-52 ante.

4 As to the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS.

5 The functions of local commissioners in Wales are to be conferred by regulations made by the National Assembly for Wales: see the Local Government Act 2000 ss 68(1), (3)(a), 70(1), 73. Any statement (whether written or oral) made by a local commissioner in Wales in connection with the exercise of these functions is absolutely privileged for the purposes of the law of defamation: s 74.

6 See under ibid s 71(3) or s 72(4): see LOCAL GOVERNMENT vol 69 (2009) PARAS 273, 274. As to the role of the Adjudication Panel for Wales and its tribunals in adjudication of the matters referred by the ethical standards officers see LOCAL GOVERNMENT vol 69 (2009) PARA 278 et seq.

UPDATE

53 Functions of the Standards Board for England performed by the [Public Services Ombudsman for Wales]

TEXT AND NOTES--References to the Commission for Local Administration in Wales are now to the Public Services Ombudsman for Wales (see LOCAL GOVERNMENT vol 69 (2009) PARA 267 et seq); Local Government Act 2000 ss 68-74 (amended by Public Services Ombudsman (Wales) Act 2005 Sch 4 paras 11-18).

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(6) THE HEALTH SERVICE COMMISSIONERS

54. Investigations of actions of health authorities.

The Health Service Commissioners for England and Wales¹ may investigate certain matters relating to relevant bodies. The relevant authorities are: health authorities²; any special health authority established on or before 1 April 1974, any special health authority established after that date and appropriately designated either by order of the National Assembly for Wales or by Order in Council as the case may be³; national health service trusts managing a hospital, or other establishment or facility⁴; Primary Care Trusts⁵; individuals undertaking to provide general

medical services or general dental services⁶; individuals and bodies undertaking to provide general ophthalmic services or pharmaceutical services⁷ and individuals performing personal medical services or personal dental services in accordance with arrangements made with health authorities except as employees of, or otherwise on behalf of, a health service body or independent provider⁸; persons (whether individuals or bodies) providing services of any kind under arrangements with health service bodies or family health service providers where the persons are not themselves health service bodies or family health service providers⁹; in the case of the Health Service Commissioner for England, the Dental Practice Board and the Public Health Laboratory Service Board¹⁰; and in the case of the Health Service Commissioner for Wales, the National Assembly for Wales¹¹.

A Health Service Commissioner may investigate upon a complaint being made by or on behalf of any person that he has sustained injustice or hardship in consequence of the failure or in consequence of: (1) an alleged failure in a service provided by a health service body¹²; (2) an alleged failure of such a body to provide a service which it was a function of the body to provide¹³; (3) maladministration¹⁴ connected with any other action taken by or on behalf of such a body¹⁵; (4) action taken by a family health service provider who has undertaken to provide any family health services in connection with these services¹⁶; and (5) an alleged failure in the service provided by an independent provider, an alleged failure by an independent provider to provide a service, or maladministration connected with any other action taken by an independent provider in relation to the service¹⁷. The Health Service Commissioners may not question the merits of a decision taken without maladministration in the exercise of a discretion except to the extent that the decision was taken in consequence of the exercise of clinical judgment¹⁸.

A Health Service Commissioner may not investigate certain matters¹⁹, including: (a) action taken by a health authority in the exercise of its specified functions in respect of general health services²⁰ or service committees²¹; (b) action taken in respect of appointments or removals, pay, discipline or other personnel matters in relation to service under the National Health Service Act 1977 or the National Health Service and Community Care Act 1990 or service as a member of the staff of the National Assembly for Wales²²; (c) action taken in matters relating to contractual or other commercial transactions except for matters relating to National Health Service contracts, matters arising from arrangements between a health service body and an independent provider for the provision of services by the provider and matters arising from arrangements between a family health service provider and an independent provider for the provision of services by the independent provider²³; (d) any action in respect of which the person aggrieved has or had a remedy by way of proceedings in any court of law or a right of appeal, reference or review before a tribunal, unless the Commissioner is satisfied that it was not reasonable for the person aggrieved to resort or have resorted to such a right or remedy²⁴; and (e) action which has been or is the subject of an inquiry under the National Health Service Act 1977²⁵. However, the Health Service Commissioners are not prevented from investigating action taken by a health service body in operating a procedure established to examine complaints²⁶.

A complaint may be made by any person aggrieved, whether an individual or a corporate body or unincorporated body, except a local authority or certain other public bodies²⁷. Where the person aggrieved has died or is for any reason unable to act for himself, certain other persons may make a complaint on his behalf²⁸. In addition, a relevant body, other than a party to arrangements made between a health service body and a family health service provider for the provision of family health services²⁹, may itself refer a complaint to the Commissioner³⁰.

When a Commissioner conducts an investigation, he must send a report of the results of his investigation to certain interested parties, including the complainant and the relevant body in question³¹. If, after conducting an investigation, it appears to a Commissioner that the person aggrieved sustained injustice or hardship in consequence of the action of the relevant body in

question, and that the injustice or hardship has not been and will not be remedied, he may, if he thinks fit, lay a copy of the report before each House of Parliament³².

Each Commissioner must annually lay a general report on the performance of his functions before each House of Parliament and may from time to time lay before each House of Parliament such other reports as he thinks fit³³.

1 See the Health Service Commissioners Act 1993 s 1 (as amended), Schs 1 (as amended), 1A (as added and amended); the Parliamentary and Health Service Commissioners Act 1987; and generally HEALTH SERVICES vol 54 (2008) PARA 641. The Health Service Commissioners were created by the National Health Service Reorganisation Act 1973 Pt III (ss 31-39) (now repealed). There is one Health Service Commissioner for England and one for Wales: Health Service Commissioners Act 1993 s 1(1). A Health Service Commissioner for Scotland was created by the National Health Service (Scotland) Act 1972; see now the Health Service Commissioners Act 1993 s 1(1)(c), Sch 1 (as amended by the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 4, Sch 2 para 112(1), (4)). Every health authority is required to ensure that all its hospitals have a regular complaints procedure in accordance with directions given by the Secretary of State but no right of appeal or review conferred by that procedure can prevent an investigation by the Health Service Commissioner: see the Hospital Complaints Procedure Act 1985 s 1 (as amended); and HEALTH SERVICES vol 54 (2008) PARA 599.

2 Health authorities whose areas are in England are subject to investigation by the Health Service Commissioner for England, and Health Authorities whose areas are in Wales are subject to investigation by the Health Service Commissioner for Wales: Health Service Commissioners Act 1993 s 2(1)(a), (2)(a) (substituted by the Health Authorities Act 1995 ss 2(1), 5(1), Sch 1 Pt III para 126(2)).

3 A special health authority which exercises its functions wholly or mainly in Wales is to be designated by order made by the Welsh Assembly by statutory instrument: Health Service Commissioners Act 1993 s 2(6) (substituted by the Government of Wales Act 1998 s 112, Sch 10 para 3(4)). In any other case, special health authorities will be designated by Order in Council. Special health authorities have been designated by the following orders: the Health Service Commissioner for England (Mental Health Act Commission) Order 1983, SI 1983/1114; the Health Service Commissioner for England (Rural Dispensing Committee) Order 1983, SI 1983/1115; the Health Service Commissioner for England (National Blood Authority) Order 1994, SI 1994/2954; the Health Service Commissioner (Family Health Services Appeal Authority) Order 1995, SI 1995/753; and the Health Service Commissioner for England (Authorities for the Ashworth, Broadmoor and Rampton Hospitals) Order 1996, SI 1996/717.

4 Health Service Commissioners Act 1993 s 2(1)(d), (2)(c).

5 Ibid s 2(1)(da), (2)(aa) (added by the Health Act 1999 s 65(1), Sch 4 para 85(1), (2)).

6 Health Service Commissioners Act 1993 s 2A(1)(a), (2)(a) (s 2A added by the Health Service Commissioners (Amendment) Act 1996 s 1; the Health Service Commissioners Act 1993 s 2A(1)(a)-(c), (2)(a)-(c) substituted by the National Health Service (Primary Care) Act 1997 s 41(10), Sch 2 Pt I para 68). Such services are provided under the National Health Service Act 1977 Pt II (ss 29-56) (as amended): see HEALTH SERVICES vol 54 (2008) PARA 295. The provision for supervision extends to individuals who undertook to provide such services at the time of the action which is the subject of the complaint: Health Service Commissioners Act 1993 s 2A(1), (2) (as so added; and amended by the Health Service Commissioners (Amendment) Act 2000 s 1(1), (2)).

7 Health Service Commissioners Act 1993 s 2A(1)(b), (2)(b) (as added and substituted: see note 6 supra). Such services are provided under the National Health Services Act 1977 Pt II (as amended): see HEALTH SERVICES vol 54 (2008) PARA 295. The provision for supervision extends to individuals or bodies who undertook to provide such services at the time of the action which is the subject of the complaint: Health Service Commissioners Act 1993 s 2A(1), (2) (as added and amended: see note 6 supra).

8 Ibid s 2A(1)(c), (2)(c) (as added and substituted: see note 6 supra). The arrangements with health service bodies or independent bodies are arrangements made under the National Health Service Act 1977 s 28C (as added and amended). The provision for supervision extends to individuals who undertook to provide such services at the time of the action which is the subject of the complaint: Health Service Commissioners Act 1993 s 2A(1), (2) (as added and amended: see note 6 supra).

9 Ie independent providers: see ibid s 2B(1), (2) (added by the Health Services Commissioners (Amendment) Act 1996 s 1). The provision for supervision extends to individuals or bodies who undertook to provide such services at the time of the action which is the subject of the complaint: Health Service Commissioners Act 1993 s 2B(1), (2) (as so added; and amended by the Health Service Commissioners (Amendment) Act 2000 s 1(1), (3)).

10 Health Service Commissioners Act 1993 s 2(1)(f), (g).

- 11 Ibid s 2(2)(ca) (added by the Government of Wales Act 1998 s 112, Sch 10 para 3(2)).
- 12 Health Service Commissioners Act 1993 s 3(1)(a).
- 13 Ibid s 3(1)(b).
- 14 For the meaning of 'maladministration' see para 41 note 6 ante. Any failure or maladministration mentioned in ibid s 3(1) may arise from action of the health service body, any person employed by or acting on behalf of that body or a person to whom that body has delegated any function: s 3(1ZA) (added by the National Health Service (Primary Care) Act 1997 s 41(10), Sch 2 Pt I para 68(5)).
- 15 Health Service Commissioners Act 1993 s 3(1)(c).
- 16 Ibid s 3(1A), (5) (s 3(1A), (5) added by the Health Service Commissioners (Amendment) Act 1996 s 2(2), (3)).
- 17 Health Service Commissioners Act 1993 s 3(1C), (6) (s 3(1C), (6) added by the Health Service Commissioners (Amendment) Act 1996 s 2(2), (3)). Any failure or maladministration mentioned in the Health Service Commissioners Act 1993 s 3(1C) (as added) may arise from the action of a person employed by or acting on behalf of an independent provider or a person to whom an independent provider has delegated any functions: s 3(1D) (added by the Health Service Commissioners (Amendment) Act 1996 s 2(2)).
- 18 See the Health Service Commissioners Act 1993 s 3(4)-(7) (s 3(5)-(7) added by the Health Service Commissioners (Amendment) Act 1996 ss 2(3), 6(2)).
- 19 See the Health Service Commissioners Act 1993 ss 4-7 (as amended). See further HEALTH SERVICES vol 54 (2008) PARA 645.
- 20 See ibid s 6(5) (added by the Health Service Commissioners (Amendment) Act 1996 s 7(3); and prospectively amended by the National Health Service (Primary Care) Act 1997 s 41(11), Sch 2 Pt II para 81). The specified functions in respect of general health services are functions exercisable under regulations made under the National Health Service Act 1977 ss 29, 35, 36, 38, 39, 41 (all as amended) or s 42 (as substituted and amended) or by virtue of the Health and Medicines Act 1988 s 17 (as amended): see HEALTH SERVICES vol 54 (2008) PARA 339-340.
- 21 Health Service Commissioners Act 1993 s 6(3) (amended by the Health Authorities Act 1995 s 2(1), Sch 1 Pt III para 126(1), (3)). The specified functions in respect of service committees are functions under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664 (as amended), or any instrument amending or replacing those regulations: see HEALTH SERVICES vol 54 (2008) PARA 619 et seq.
- 22 Health Service Commissioners Act 1993 s 7(1) (amended by the Health Service Commissioners (Amendment) Act 1996 s 8(2); and the Government of Wales Act 1998 s 112, Sch 10 paras 1, 6).
- 23 Health Service Commissioners Act 1993 s 7(2) (amended by the Health Service Commissioners (Amendment) Act 1996 Sch 1).
- 24 Health Service Commissioners Act 1993 s 4(1). See para 46 note 16 ante.
- 25 Ibid s 4(2). An inquiry is made under the National Health Service Act 1977 s 84 (as amended).
- 26 Health Service Commissioners Act 1993 s 7(3B) (added by the Health Service Commissioners (Amendment) Act 1996 Sch 1 para 2(5)).
- 27 See the Health Service Commissioners Act 1993 s 8 (amended by the Government of Wales Act 1998 s 112, Sch 10 paras 1, 7). See also HEALTH SERVICES vol 54 (2008) PARA 646. The complaint must be made within one year of the matters in question coming to the notice of the complainant, unless the Commissioner considers it reasonable to consider the complaint beyond this period: Health Service Commissioners Act 1993 s 9(4). If the complaint is brought against a person who is no longer a family health service provider subject to investigation under s 2A(1), (2) (as added and amended) but who was at the time of the action complained of, the complaint may be made within three years of the last day on which the person was a family health service provider: s 9(4A) (added by the Health Service Commissioners (Amendment) Act 2000 s 2). If the complaint is against a person who was an independent provider of services under arrangements with health service bodies or family health service providers but in relation to whom there are no longer any such arrangements in place, the complaint may be made within three years of the last day in which the person was an independent provider: Health Service Commissioners Act 1993 s 9(4B) (added by the Health Service Commissioners (Amendment) Act 2000 s 2).

For the procedures to be followed in the investigation of a complaint (which are broadly similar to those followed by the Parliamentary Commissioner for Administration and the local commissioners: see paras 41-49 ante) see the Health Service Commissioners Act 1993 ss 9-13 (as amended); and HEALTH SERVICES vol 54 (2008) PARA 339-340. There is provision for consultation between the Health Service Commissioner and the Parliamentary Commissioner for Administration and the commissioner for local administration: see s 18 (amended by the Government of Wales Act 1998 ss 112, 152, Sch 10 paras 1, 14, Sch 18 Pt I).

28 Health Service Commissioners Act 1993 s 9(3)(b). A complaint may in these circumstances be made by the personal representative of the person aggrieved, a member of his family or some body or individual suitable to represent him: s 9(3)(b).

29 See *ibid* s 7(3A) (added by the Health Service Commissioners (Amendment) Act 1996 Sch 1 para 2(5)).

30 Health Service Commissioners Act 1993 s 10(1). The reference must be made within 12 months of the day on which the body received the complaints: s 10(3).

31 See *ibid* s 14(1) (amended by the Health Authorities Act 1995 s 2(1), Sch 1 para 126(4); the Health Service Commissioners (Amendment) Act 1996 ss 3, 10(2), Sch 1 para 5(2); and the Government of Wales Act 1998 s 112, Sch 10 para 10), Health Service Commissioners Act 1993 s 14(2A), (2C) (s 14(2A)-(2D) added by the Health Service Commissioners (Amendment) Act 1996 s 3, Sch 1 para 5(4); and amended by the Government of Wales Act 1998 Sch 10 para 10(2)). In any case where a Commissioner decides not to conduct an investigation he must send a statement of his reasons for doing so to the complainant and any member of the House of Commons who assisted in the making of the complaint: Health Service Commissioners Act 1993 s 14(2) (amended by the Health Service Commissioners (Amendment) Act 1996 ss 10(3)(b), 13, Sch 2), Health Service Commissioners Act 1993 s 14(2B), (2D) (as so added and amended). Such a report is absolutely privileged: see s 14(5) (amended by the Government of Wales Act 1998 Sch 10 para 10(2)).

32 Health Service Commissioners Act 1993 s 14(3) (amended by the Health Service Commissioners (Amendment) Act 1996 s 10(4), Sch 3 para 5(5); and the Government of Wales Act 1998 Sch 10 para 10(2)). Such a report is absolutely privileged: Health Service Commissioners Act 1993 s 14(5) (as amended: see note 31 *supra*). The 1997-98 report of the Health Service Commissioner for England shows that he received 2,660 complaints of which 1,990 were rejected outright and a further 338 complaints were rejected with advice to the relevant health service body or agreement by it to take action: see the *Annual Report of the Health Service Commissioner for 1997-98* (HC Paper (1997-98) no 811). Of the 4% of complaints which were fully investigated, over 90% were upheld at least in part.

33 Health Service Commissioners Act 1993 s 14(4) (substituted by the Health Service Commissioners (Amendment) Act 1996 s 10(5); and amended by the Government of Wales Act 1998 Sch 10 para 10(3)). Such reports are absolutely privileged: Health Service Commissioners Act 1993 s 14(5) (as amended: see note 31 *supra*).

UPDATE

54 Investigations of actions of health authorities

TEXT AND NOTES--NHS foundation trusts are also subject to investigation by the Health Service Commissioner: Health Service Commissioners Act 1993 s 2(1)(db) (added by Health and Social Care (Community Health and Standards) Act 2003 Sch 4 para 94).

TEXT AND NOTES 1-11--1993 Act s 2(1) further amended, s 2(2) repealed: Public Services Ombudsman (Wales) Act 2005 Sch 6 para 31(2), (3), Sch 7.

NOTE 1--1993 Act s 1(1) amended: 2005 Act Sch 6 para 30(2), Sch 7.

NOTE 2--In relation to England, now refers to strategic health authorities (see HEALTH SERVICES vol 54 (2008) PARA 94): 1993 Act s 2(1)(a) (s 2(1)(a) substituted by National Health Service Reform and Health Care Professions Act 2002 Sch 1 para 47).

TEXT AND NOTE 3--In relation to the Health Service Commissioner for England, now refers to special health authorities not exercising functions only or mainly in Wales: 1993 Act s 2(1)(c) (s 2(1)(c) amended by 2003 Act Sch 11 para 61(a) (in force in relation to Wales: SI 2004/480)).

NOTE 3--A designation made for the purposes of the 1993 Act s 2(5)(b) must be made by Order in Council; and a statutory instrument containing an Order in Council made by virtue of this provision will be subject to annulment in pursuance of a resolution of either House of Parliament: s 2(6) (substituted by 2005 Act Sch 6 para 31(4)).

SI 1983/1114 revoked: SI 2009/462. SI 1995/753 revoked: SI 2005/502. Further special health authorities have been designated by the Health Service Commissioner for England (Special Health Authorities) Order 2005, SI 2005/251 (amended by SI 2005/1781, SI 2006/635); the Health Service Commissioner for England (Special Health Authorities) (No 2) Order 2005, SI 2005/3428; and the Health Service Commissioner for England (Special Health Authorities) Order 2006, SI 2006/305.

SI 1983/1115, SI 1994/2954 revoked: SI 2006/3332. SI 1996/717 revoked: SI 2009/883.

NOTE 5--1993 Act s 2(1)(da) amended: 2002 Act Sch 2 para 61(2)(a).

TEXT AND NOTES 6-8--1993 Act s 2A(1) further amended, s 2A(2) repealed: 2005 Act Sch 6 para 32, Sch 7; National Health Service (Consequential Provisions) Act 2006 Sch 1 para 166.

1993 Act s 2A(1) further amended: Health Act 2006 Sch 8 para 33 (amended by National Health Service (Consequential Provisions) Act 2006 Sch 1 para 292).

TEXT AND NOTE 9--1993 Act s 2B(1) further amended, s 2B(2) repealed: 2005 Act Sch 6 para 33, Sch 7.

TEXT AND NOTE 10--Dental Practice Board prospectively abolished and Public Health Laboratory Service Board abolished; 1993 s 2(1)(f), (g) repealed accordingly: 2003 Act Sch 13 para 7, Sch 14 Pts 4 (not yet in force), 7.

TEXT AND NOTES 12-18--1993 Act s 3 further amended: 2005 Act Sch 6 para 35, Sch 7.

TEXT AND NOTES 12-17--Also, head (6) maladministration by any person or body in the exercise of any function under the 2003 Act s 113 (see HEALTH SERVICES vol 54 (2008) PARA 596): 1993 Act s 3(1E) (added by 2003 Act s 118).

TEXT AND NOTES 20, 21--1993 Act s 6(3), (5) further amended: 2005 Act 5 Sch 6 para 37, Sch 7.

TEXT AND NOTE 20--1993 Act s 6(5) further amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 167; Health Act 2006 Sch 8 para 34.

TEXT AND NOTES 22, 23, 26, 29--1993 Act s 7 further amended: 2005 Act Sch 6 para 38, Sch 7; National Health Service (Consequential Provisions) Act 2006 Sch 1 para 168.

TEXT AND NOTES 24, 25--1993 Act s 4 amended: 2005 Act Sch 6 para 36.

NOTE 27--1993 Act s 9(4A), (4B) amended: 2005 Act Sch 6 para 39. If at any stage in the course of conducting an investigation under the 1993 Act, the Commissioner forms the opinion that the complaint relates partly to a matter within the jurisdiction of (1) the Parliamentary Commissioner, (2) a local commissioner, or (3) both, he may, subject to obtaining the consent of the person aggrieved or any person acting on his behalf, conduct an investigation jointly with that commissioner or those commissioners: s 18ZA (added by SI 2007/1889).

TEXT AND NOTE 30--1993 Act s 10 amended: 2005 Act Sch 6 para 40.

TEXT AND NOTES 31-33--1993 Act s 14 further amended: 2005 Act Sch 6 para 45.

NOTE 31--In relation to complaints under the 1993 Act s 3(1E) (see TEXT AND NOTES 12-17), see also s 14(2E), (2F); and HEALTH SERVICES vol 54 (2008) PARA 644.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/3. NON-JUDICIAL REDRESS IN RESPECT OF ADMINISTRATIVE ACTION/(7) THE COUNCIL ON TRIBUNALS/55. Membership of the council.

(7) THE COUNCIL ON TRIBUNALS

55. Membership of the council.

The Council on Tribunals consists of not more than 15 nor less than 10 members appointed by the Lord Chancellor¹ and the Scottish Ministers². One member is so appointed as chairman³. There is a Scottish Committee of the Council⁴. In appointing members of the Council regard must be had to the need for representation of the interests of persons in Wales⁵. The Parliamentary Commissioner for Administration is, by virtue of his office, a member of the Council⁶. The chairman of the Council is paid a salary and other members may be paid fees as determined by the Treasury⁷. All members hold and vacate office under the terms of the instruments appointing them, but a member may resign office by notice in writing, and a member who has vacated or resigned office is eligible for reappointment⁸. The office disqualifies the holder for membership of the House of Commons⁹.

1 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq.

2 Tribunals and Inquiries Act 1992 s 2(1) (s 2(1), (2) amended by the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 1999, SI 1999/1747, art 3, Sch 9 para 2(1), (2)).

3 Tribunals and Inquiries Act 1992 s 2(1) (as amended: see note 2 supra).

4 See ibid s 2(2) (as amended: see note 2 supra). As to the composition and functions of the Scottish Committee see eg ss 2 (as amended), 4(4)-(6) (as amended), 5(3) (as amended), 6(8), 8(3) (as amended), 9(4) (as amended), 11(7), Sch 1 Pt II (as amended).

5 Ibid s 2(4).

6 Ibid s 2(3). As to the Parliamentary Commissioner see paras 41-44 ante.

7 Ibid s 3(2). The salaries and fees payable under s 3(2), together with such expenses of the Council and of the Scottish Committee (including subsistence allowances for and travelling expenses of their members) as may be approved by the Treasury are to be defrayed out of moneys provided by Parliament: s 3(3). As to the Treasury see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 512-517.

8 Ibid s 3(1).

9 See the House of Commons Disqualification Act 1975 s 1, Sch 1 Pt II.

UPDATE

55-57 The Council on Tribunals

The Council on Tribunals and the Scottish Committee of the Council on Tribunals are abolished and replaced by the Administrative Justice and Tribunals Council: see Tribunals, Courts and Enforcement Act 2007 ss 44, 45, Sch 7; and PARA 57A.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/3. NON-JUDICIAL REDRESS IN RESPECT OF ADMINISTRATIVE ACTION/(7) THE COUNCIL ON TRIBUNALS/56. Functions of the Council on Tribunals.

56. Functions of the Council on Tribunals.

The Council on Tribunals is required to keep under review the constitution and working of certain specified statutory tribunals¹ and, from time to time, to report² on their constitution and working³. The Council is also required to consider and report on such particular matters as may be referred to it under the Tribunals and Inquiries Act 1992⁴ with respect to tribunals other than the ordinary courts of law, whether or not within the category of specified statutory tribunals, or any such tribunal⁵, and to consider and report on such matters as may be so referred to it, or as it may determine to be of special importance, with respect to administrative procedures involving, or which may involve, the holding by or on behalf of a minister of a statutory inquiry, or any such procedure⁶. The power of a minister⁷, the Commissioners of Inland Revenue or the Foreign Compensation Commission to make, approve, confirm or concur in procedural rules for any specified statutory tribunal may only be exercised after consultation with the Council⁸. After consultation with the Council, the Lord Chancellor⁹ may make rules regulating the procedure to be followed in connection with statutory inquiries held by or on behalf of ministers¹⁰. The Council may make to the appropriate minister¹¹ general recommendations as to the making of appointments to membership of the specified statutory tribunals¹² or of panels constituted for the purpose of any such tribunals¹³.

Any report by or reference to the Council on Tribunals is made to, or as the case may be by, the Lord Chancellor and the Scottish Ministers¹⁴. Where the Council reports on a matter without any reference having been made to it¹⁵, the report is made to the Lord Chancellor and the Scottish Ministers¹⁶. The Council must make an annual report¹⁷ to the Lord Chancellor and the Scottish Ministers on its proceedings and those of the Scottish Committee, and the Lord Chancellor must lay the annual report before Parliament and the Scottish Ministers must lay the report before the Scottish Parliament with such comments, if any, as they think fit¹⁸.

1 The tribunals under the supervision of the Council are specified in the Tribunals and Inquiries Act 1992 s 1, Sch 1 (as amended): see para 57 post. The working of certain of these tribunals in the exercise of their executive functions is, however, excluded from this obligation of the Council. The tribunals which are excluded are those mentioned in Sch 1 paras 14(a), 20, 33, 34, 39(a) or (b) or 40 (ie the tribunals mentioned in para 57 notes 19, 25, 39, 42, 49, 50 post); the Director General of Fair Trading (see para 57 note 22 post); and the Controller of Plant Variety Rights (see para 57 note 44 post): s 14(1). The supervision of the Council on Tribunals is confined to those functions of the Civil Aviation Authority which are prescribed for the purposes of the Civil Aviation Act 1982 s 7(2) (as amended) (see AIR LAW vol 2 (2008) PARA 50): Tribunals and Inquiries Act 1992 s 14(3). As to the Council on Tribunals generally see *Special Report: The Functions of the Council on Tribunals* (Cmnd 7805) (1980).

2 As to the reports by the Council see the text and notes 14-18 infra.

3 Tribunals and Inquiries Act 1992 s 1(1)(a). See generally *Special Report: The Functions of the Council on Tribunals* (Cmnd 7805) (1980).

4 As to references see the text and notes 14-15 infra.

5 Tribunals and Inquiries Act 1992 s 1(1)(b).

6 Ibid s 1(1)(c). For the meaning of 'statutory inquiry' see para 15 ante.

7 For the meaning of 'minister' see para 14 note 14 ante.

8 Tribunals and Inquiries Act 1992 s 8(1). See also the Value Added Tax Tribunals Rules 1986, SI 1986/590 (as amended); and VALUE ADDED TAX vol 49(1) (2005 Reissue) para 349 et seq. The procedure in the exercise of the executive functions of the tribunals mentioned in note 1 supra, as excluded from the obligation to keep under review, is also excluded from this restriction: see the Tribunals and Inquiries Act 1992 s 14(1); and note 1 supra.

9 As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq.

10 Tribunals and Inquiries Act 1992 s 9(1). Different provision may be made by any such rules in relation to different classes of statutory inquiries: s 9(1). Any rules made by the Lord Chancellor under s 9(1) are to have effect, in relation to any statutory inquiry, subject to the provisions of the enactment under which the inquiry is held, and of any rules or regulations made under that enactment (s 9(2)); and such rules may regulate procedure in connection with matters preparatory to such statutory inquiries as are mentioned in s 9(1), and in connection with matters subsequent to such inquiries, as well as in connection with the conduct of proceedings at such inquiries (s 9(3)). For examples of rules made under this provision see the Gas (Underground Storage) (Inquiries Procedure) Rules 1966, SI 1966/1375; the Town and Country Planning (Inquiries Procedure) Rules 1992, SI 1992/2038 (amended by SI 1996/525) (revoked in relation to England); and the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624.

11 For the meaning of 'the appropriate minister' see para 14 note 14 ante.

12 Ie the tribunals specified in the Tribunals and Inquiries Act 1992 Sch 1 (as amended): see para 57 post.

13 See *ibid* s 5(1); and para 14 ante.

14 *Ibid* s 4(1) (s 4(1)-(7) amended by the Scotland Act 1998 (Cross-Border Public Authorities) (Adaptation of Functions etc) Order 1999, SI 1999/1747, arts 3, 4, Sch 9 Pts I, II para 2(1), (2)). A reference to the Council of a matter relating only to England and Wales may be made by the Lord Chancellor, and the report of the Council on such a reference is made to the minister making the reference: Tribunals and Inquiries Act 1992 s 4(2) (as so amended).

15 The Council may report on any matter which it determines to be of special importance, with respect to administrative procedures involving, or which may involve, the holding by or on behalf of a minister of a statutory inquiry, or any such procedure: *ibid* s 1(1)(c).

16 *Ibid* s 4(1) (as amended: see note 14 supra). If the matter relates only to England and Wales, the report is made to the Lord Chancellor: s 4(2), (4)(a) (as so amended).

17 Annual reports for the calendar year 1 January to 31 December were made from 1959 to 1968, inclusive. The practice was changed in the *Annual Report for 1969-70*, which covered the period 1 January 1969 to 29 May 1970, and in the *Annual Report for 1970-71*, which covered the period from 30 May 1970 to 31 July 1971. Since 1970, reports run from 1 August to 31 July: see the *Annual Report of the Council on Tribunals for 1969-70* (HC Paper (1969-70) no 72) para 1; the *Annual Report of the Council on Tribunals for 1970-71* (HC Paper (1970-71) no 26) para 1.

18 Tribunals and Inquiries Act 1992 s 4(7) (as amended: see note 14 supra). The annual reports of the Council show that the Council is prepared to receive and consider individual complaints relating to tribunals and inquiries.

UPDATE

55-57 The Council on Tribunals

The Council on Tribunals and the Scottish Committee of the Council on Tribunals are abolished and replaced by the Administrative Justice and Tribunals Council: see Tribunals, Courts and Enforcement Act 2007 ss 44, 45, Sch 7; and PARA 57A.

56 Functions of the Council on Tribunals

NOTE 1--Tribunals and Inquiries Act 1992 s 14(1) amended: Enterprise Act 2002 Sch 25 para 27(3).

TEXT AND NOTE 8--1992 Act s 8 repealed: Tribunals, Courts and Enforcement Act 2007 Sch 8 para 27, Sch 23 Pt 1 (in force in so far as it applies to the powers of a minister: SI 2008/1653).

TEXT AND NOTE 10--The Lord Chancellor's function under the 1992 Act s 9 is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 489A.1.

NOTE 10--SI 2000/1624 replaced: Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115 (amended by SI 2008/2831); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266 (amended by SI 2007/2285).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/3. NON-JUDICIAL REDRESS IN RESPECT OF ADMINISTRATIVE ACTION/(7) THE COUNCIL ON TRIBUNALS/57. Tribunals within the purview of the Council on Tribunals.

57. Tribunals within the purview of the Council on Tribunals.

The statutory tribunals under the supervision of the Council on Tribunals are specified in the Tribunals and Inquiries Act 1992¹. They are particular tribunals concerned with the following matters: agriculture²; aircraft and shipbuilding industries³; Antarctica⁴; asylum-seekers support⁵; aviation⁶; banking⁷; betting levies⁸; building societies⁹; chemical weapons¹⁰; child support maintenance¹¹; children's homes, voluntary homes, nursing homes, mental nursing homes and residential care homes¹²; commons¹³; competition¹⁴; conveyancing¹⁵; copyright¹⁶; criminal injuries compensation¹⁷; dairy produce quotas¹⁸; data protection¹⁹; education²⁰; employment²¹; fair trading²²; financial services²³; food²⁴; foreign compensation²⁵; forestry²⁶; friendly societies²⁷; immigration appeals²⁸; indemnification of justices and clerks²⁹; industrial training levy exemption and industry³⁰; insolvency practitioners³¹; land³²; local authorities, conduct of members³³; local taxation³⁴; London Building Acts³⁵; mental health³⁶; mines and quarries³⁷; misuse of drugs³⁸; national health service³⁹; national lottery⁴⁰; national savings⁴¹; patents, designs and trade marks⁴²; pensions⁴³; plant varieties⁴⁴; police⁴⁵; protection of children⁴⁶; rents⁴⁷; reserve forces⁴⁸; revenue⁴⁹; road traffic⁵⁰; sea fish conservation⁵¹; social security⁵²; transport⁵³; vaccine damage⁵⁴; value added tax⁵⁵; and wireless telegraphy⁵⁶.

1 See the Tribunals and Inquiries Act 1992 s 1(1)(a), Sch 1 Pt I (as amended); and the text and notes 2-56 *infra*. The Lord Chancellor and the Secretary of State may by order amend Sch 1 by adding any such tribunals, other than any of the ordinary courts of law, as may be provided by the order: s 13(1) (amended by the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999, SI 1999/678, art 2(1), Schedule). The power is exercisable by statutory instrument subject to annulment by resolution of either House of Parliament: Tribunals and Inquiries Act 1992 s 15.

Certain tribunals, eg the tribunals relating to the indemnification of justices and clerks (see note 29 *infra*) and the mines and quarries tribunals (see note 37 *infra*), have never sat. See the *Annual Report of the Council on Tribunals for 1999-2000*, Table 1.

The busiest tribunals are the valuation tribunals which, in both England and Wales received a total of 234,350 cases in 1999. The General Commissioners of Income Tax had 94,814 cases listed before them in 1999. The social security appeals tribunals received 231, 373 cases in 1999 and decided 330,454. The employment tribunals in England, Scotland and Wales received 103,375 cases in 1999 and decided 23,427. See the *Annual Report of the Council on Tribunals for 1999-2000*, Table 1.

2 Ie the agricultural land tribunals established under the Agriculture Act 1947 s 73 (as amended); and arbitrators appointed (otherwise than by agreement) under the Agricultural Holdings Act 1986 s 84 Sch 11 (as amended): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 1.

3 Ie the Aircraft and Shipbuilding Industries Arbitration Tribunal established under the Aircraft and Shipbuilding Industries Act 1977 s 42 (as amended): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 2. This tribunal last sat in the early 1980s. It has not been abolished by legislation but is not expected to sit further.

4 le the tribunal established under the Antarctic Regulations 1995, SI 1995/490, reg 11: Tribunals and Inquiries Act 1992 Sch 1 Pt I para 2A (added by the Tribunals and Inquiries (Antarctic Act Tribunal) Order 1995, SI 1995/2877, art 2).

5 le the asylum support adjudicators established under the Immigration and Asylum Act 1999 s 102: Tribunals and Inquiries Act 1992 Sch 1 Pt I para 2A (sic) (added by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 94, 95).

6 le the Civil Aviation Authority established under the Civil Aviation Act 1982 s 2 (as amended): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 3.

7 le an appeal tribunal constituted under the Banking Act 1987 s 28 (as amended): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 4.

8 le an appeal tribunal for England and Wales established under the Betting, Gaming and Lotteries Act 1963 s 29 (as amended): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 5.

9 le the tribunal constituted in accordance with the Building Societies Act 1986 s 47 (as amended): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 6.

10 le chemical weapons licensing appeal tribunals established by the Chemical Weapons (Licence Appeal Provisions) Order 1996, SI 1996/3030, and brought within the supervision of the Council of Tribunals by the Deregulation (Model Appeal Provisions) Order 1996, SI 1996/1678, Schedule para 37.

11 le appeal tribunals constituted under the Social Security Act 1998 Pt I Ch I (ss 1-7) (as amended) or a child support commissioner appointed under the Child Support Act 1991 s 22 (as amended): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 7(a), (b) (amended by the Social Security Act 1998 s 86(1), Sch 7 para 121(1)).

12 le registered homes tribunals constituted under the Registered Homes Act 1984 Pt III (ss 39-45) (as amended and prospectively repealed): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 8 (prospectively repealed by the Care Standards Act 2000 s 117(2), Sch 6 as from a day to be appointed).

13 le the Commons Commissioners and assessors appointed under the Commons Registration Act 1965 s 17(2), (3): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 9.

14 le an appeal tribunal established under the Competition Act 1998 s 48: Tribunals and Inquiries Act 1992 Sch 1 Pt I para 9A (added by the Competition Act 1998 s 74(1), Sch 12 para 15).

15 le a conveyancing appeals tribunal constituted under the Courts and Legal Services Act 1990 s 39: Tribunals and Inquiries Act 1992 Sch 1 Pt I para 10. As to the jurisdiction of the Conveyancing Ombudsman over the professional conduct of licensed conveyancers see also the Courts and Legal Services Act 1990 s 43, Sch 7.

16 le the Copyright Tribunal constituted under the Copyright, Designs and Patents Act 1988 s 145 (as amended): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 11.

17 le the adjudicators appointed under the Criminal Injuries Compensation Act 1995 s 5 (as amended): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 12 (substituted by the Criminal Injuries Compensation Act 1995 s 5(8)).

18 le the Dairy Produce Quota Tribunal constituted under the Dairy Produce Quotas Regulations 1997, SI 1997/733, reg 34: Tribunals and Inquiries Act 1992 Sch 1 Pt I para 13; Interpretation Act 1978 s 17(2). This tribunal was last convened in 1994.

19 le the Information Commissioner appointed under the Data Protection Act 1998 s 6 (as amended) and the Data Protection Tribunal in respect of its jurisdiction under the Data Protection Act 1998 s 48: Tribunals and Inquiries Act 1992 Sch 1 Pt I para 14 (substituted by the Data Protection Act 1998 s 74(1), Sch 15 para 16; and amended by the Freedom of Information Act 2000 s 18(4), Sch 2 Pt I para 10(a)). The Data Protection Tribunal is to be replaced by the Information Tribunal from a day to be appointed: see CONFIDENCE AND DATA PROTECTION vol 8(1) (2003 Reissue) para 521 et seq.

20 le independent schools tribunals constituted under the Education Act 1996 s 476 (as amended), Sch 34; exclusion appeal panels constituted in accordance with the School Standards and Framework Act 1998 s 67, Sch 18; admission appeal panels constituted in accordance with the School Standards and Framework Act 1998 ss 94, 95, Sch 24 or Sch 25 para 3; a tribunal constituted in accordance with the School Inspections Act 1996 s 9, Sch 2; the Special Educational Needs Tribunal constituted under the Education Act 1996 s 333; and adjudicators appointed under the School Standards and Framework Act 1998 s 25: Tribunals and Inquiries Act 1992 Sch 1 Pt I para 15 (amended by the Education Act 1993 ss 181(1), 307(1), Sch 19 para 174; the Education Act 1996 s

582(1), Sch 37 para 118(3); the School Inspections Act 1996 s 47(1), Sch 6 para 5; and the School Standards and Framework Act 1998 ss 25, 140(1), Sch 5 para 10(2), Sch 30 para 47). See also *R v Richmond upon Thames London Borough Council, ex p JC* (2000) Times, 10 August, CA (Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) Cmd 8969) art 6 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 134-147) does not apply to school admissions appeal panels).

21 Ie employment tribunals established under the Employment Tribunals Act 1996 s 1(1): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 16 (amended by the Employment Tribunals Act 1996 s 43, Sch 1 para 9(1), (3) (a); and by virtue of the Employment Rights (Dispute Resolution) Act 1998 s 1(2)).

22 Ie the Director General of Fair Trading in respect of his functions under the Consumer Credit Act 1974 and the Estate Agents Act 1979 and any member of the Director's staff authorised to exercise those functions under the Fair Trading Act 1973 s 1(6), Sch 1 para 7: Tribunals and Inquiries Act 1992 Sch 1 Pt I para 17.

23 Ie the Financial Services Tribunal established by the Financial Services Act 1986 s 96 (as amended): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 18. As from day to be appointed Sch 1 Pt I para 18 is replaced by a reference to the Financial Services and Markets Tribunal by the Financial Services and Markets Act 2000 s 432(1), Sch 20 para 6. At the date at which this volume states the law no such day had been appointed. See also *Mahon v Rahn (No 2)* [2000] 4 All ER 41, [2000] 1 WLR 2150, CA (compatibility of the tribunal's procedure with Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 6).

24 Ie Meat Hygiene Appeals Tribunals constituted in accordance with the Food Safety Act 1990 Pt II (ss 7-26) (as amended): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 19.

25 Ie the Foreign Compensation Commission constituted under the Foreign Compensation Act 1950 s 1 (as amended): see the Tribunals and Inquiries Act 1992 Sch 1 Pt I para 20.

26 Ie committees appointed for the purposes of the Forestry Act 1967 ss 16 (as amended), 17B (as added and amended), 20 (as amended), 21 (as amended) or s 25 (as amended), being committees the members of which are appointed by the minister having functions under those provisions as respects England or Wales: Tribunals and Inquiries Act 1992 Sch 1 Pt I para 21.

27 Ie the Friendly Societies Appeal Tribunal constituted under the Friendly Societies Act 1992 s 59 (as amended): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 21A (added by the Tribunals and Inquiries (Friendly Societies) Order 1993, SI 1993/3258, art 3).

28 Ie the Immigration Adjudicators and the Immigration Appeal Tribunal established under the Immigration and Asylum Act 1999 ss 56, 57: Tribunals and Inquiries Act 1992 Sch 1 Pt I para 22 (amended by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 94, 96). As from a day to be appointed, the Immigration Services Tribunal established under the Immigration and Asylum Act 1999 s 87 is also included: see the Tribunals and Inquiries Act 1992 Sch 1 Pt I para 22A (added by the Immigration and Asylum Act 1999 s 169(1), Sch 14 paras 94, 97 as from a day to be appointed).

29 Ie any person appointed under the Justices of the Peace Act 1997 s 54(6): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 23 (amended by the Justices of the Peace Act 1997 s 73(2), Sch 5 para 32).

30 Ie referees established by the Industrial Training (Levy Exemption References) Regulations 1974, SI 1974/1335, and an arbitration tribunal established under the Industry Act 1975 s 20, Sch 3 (as amended): Tribunals and Inquiries Act 1992 Sch 1 Pt I paras 24, 25.

31 Ie the Insolvency Practitioners Tribunal referred to in the Insolvency Act 1986 s 396: Tribunals and Inquiries Act 1992 Sch 1 Pt I para 26.

32 Ie the Lands Tribunal constituted under the Lands Tribunal Act 1949 s 1(1)(b): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 27.

33 Ie a case tribunal or interim case tribunal appointed under the Local Government Act 2000 s 76: Tribunals and Inquiries Act 1992 Sch 1 Pt I para 27A (added by the Local Government Act 2000 s 107, Sch 5 para 28).

34 Ie valuation tribunals established by regulations under the Local Government Finance Act 1988 s 136, Sch 11 (as amended): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 28.

35 Ie the tribunals of appeal constituted in accordance with the London Building Acts (Amendment) Act 1939 s 109 (as amended): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 29.

36 Ie the mental health review tribunals constituted or having effect as if constituted under the Mental Health Act 1983 s 65 (as amended): Tribunals and Inquiries Act 1993 Sch 1 Pt I para 30.

37 le tribunals for the purposes of the Mines and Quarries Act 1954 s 150 (as amended): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 31.

38 le the misuse of drugs tribunals constituted under the Misuse of Drugs Act 1971 s 16(1), Sch 3 Pt I: Tribunals and Inquiries Act 1992 Sch 1 Pt I para 32.

39 le health authorities established under the National Health Service Act 1977 s 8 (as substituted and amended) in respect of their functions under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664 (as amended), or any regulations amending or replacing those regulations; the National Health Service Tribunal established under the National Health Service Act 1977 s 46 (as amended); and committees of health authorities established under the National Health Service (Service Committees and Tribunal) Regulations 1992, SI 1992/664, reg 3 (as substituted): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 33 (substituted by the Health Authorities Act 1995 s 2(1), Sch 1 para 123).

40 le the National Lottery Commission in respect of its functions under the National Lottery etc Act 1993 ss 10 (as amended), 10A (as added), Sch 3 (as amended) and any member, employee or committee of that Commission authorised under Sch 2A para 8 (as added) to exercise any of those functions: Tribunals and Inquiries Act 1992 Sch 1 Pt I para 33AA (added by the National Lottery Act 1998 s 1(5), Sch 1 para 12(3)).

41 le an adjudicator appointed under the Friendly Societies Act 1992 s 84: Tribunals and Inquiries Act 1992 Sch 1 Pt I para 33B (added by the Tribunals and Inquiries (Friendly Societies) Order 1993, SI 1993/3258, art 3(b)).

42 le the Comptroller-General of Patents, Designs and Trade Marks, and any officer authorised to exercise the functions of the Comptroller under the Patents and Designs Act 1907 s 62(3) (as amended): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 34 (amended by the Trade Marks Act 1994 s 106(1), Sch 4 para 9).

43 le pensions appeal tribunals for England and Wales established under the War Pensions (Administrative Provisions) Act 1919 s 8 (as amended); pensions appeal tribunals constituted under the Pensions Appeal Tribunals Act 1943, being tribunals appointed for England and Wales; appeal tribunals constituted in accordance with a scheme in force under the Fire Services Act 1947 s 26 (as amended); the Pensions Ombudsman established under the Pension Schemes Act 1993 Pt X (ss 145-152) (as amended); the Pensions Compensation Board as established by the Pensions Act 1995 s 78; and the Occupational Pensions Authority as established by the Pensions Act 1995 s 1; and tribunals appointed under regulations under the Police Pensions Act 1976 s 1 (as amended), to hear such appeals as by virtue of the regulations lie to tribunals so appointed (see the Police Pensions Regulations 1987, SI 1987/257 (as amended)): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 35 (amended by the Pension Schemes Act 1993 s 190, Sch 8 para 44(b); and the Pensions Act 1995 ss 122, 151, 157(12), 177, Sch 3 para 21(d), Sch 5 para 16(6), Sch 7 Pt III).

44 le the Controller of Plant Variety Rights and any officer authorised to exercise the functions of the Controller under the Plant Varieties Act 1997 s 2, Sch 1 para 3; and the Plant Varieties and Seeds Tribunal referred to in the Plant Varieties Act 1997 s 42: Tribunals and Inquiries Act 1992 Sch 1 Pt I para 36 (amended by the Plant Varieties Act 1997 s 51(5)).

45 le the Police Appeals Tribunal constituted in accordance with the Police Act 1996 s 85, Sch 6 (as amended) or the Police Act 1997 ss 38(2), 82(2): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 36A (added by the Police Act 1996 s 103, Sch 7 para 46; and amended by the Police Act 1997 s 134(1), Sch 9 para 70).

46 le the tribunal constituted under the Protection of Children Act 1999 s 9 (as amended): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 36A (sic) (added by the Protection of Children Act 1999, s 9(7), Schedule). As from a day to be appointed the Tribunals and Inquiries Act 1992 Sch 1 Pt I para 36A (as added) is amended by the Care Standards Act 2000 s 116, Sch 4 para 21 so that it is renumbered as the Tribunals and Inquiries Act 1992 Sch 1 Pt I para 36B and reference is made to vulnerable adults and care standards. At the date at which this volume states the law no such day had been appointed.

47 le rent assessment committees constituted in accordance with the Rent Act 1977 s 65, Sch 10 (as amended): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 37.

48 le the reinstatement committees appointed under the Reserve Forces (Safeguard of Employment) Act 1985 s 8, Sch 2 para 1, the umpire and deputy umpire appointed under Sch 2 para 5 (as amended) and the Reserve Forces Appeal Tribunals constituted under the Reserve Forces Act 1996 Pt X (ss 95-109): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 38 (amended by the Reserve Forces Act 1996 s 131(1), Sch 10 para 25).

49 le the Commissioners for the general purposes of income tax acting under the Taxes Management Act 1970 s 2 (as amended), for any division in England and Wales; the Commissioners for the special purposes of the Income Tax Acts appointed under the Taxes Management Act 1970 s 4 (as substituted and amended); and

the tribunal constituted for the purposes of the Income and Corporation Taxes Act 1988 Pt XVII Ch I (ss 703-709) (as amended): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 39.

50 le the traffic commissioner for any area constituted for the purposes of the Public Passenger Vehicle Act 1981 and a parking adjudicator appointed under the Road Traffic Act 1991 s 73(3)(a): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 40.

51 le the Sea Fish Licence Tribunal established under the Sea Fish (Conservation) Act 1967 s 4AA (as added): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 40A (added by the Sea Fish (Conservation) Act 1992 s 9(1), (3)).

52 le the Unified Appeal Tribunals constituted under the Social Security Act 1998 Pt I Ch I (ss 1-7) (as amended) and a Commissioner appointed under s 14(12), Sch 4 (as amended) and any tribunal presided over by a Commissioner so appointed: Tribunals and Inquiries Act 1992 Sch 1 Pt I para 41 (amended by the Social Security Act 1998 s 86, Sch 7 para 121(2), Sch 8).

53 le the Transport Tribunal constituted as provided in the Transport Act 1985 s 117(2), Sch 4 (as amended): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 42.

54 le tribunals constituted under the Vaccine Damage Payments Act 1979 s 4 (as substituted): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 43.

55 le value added tax and duties tribunals for England and Wales and Northern Ireland, constituted in accordance with the Value Added Tax Act 1994 s 61, Sch 12 (as amended): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 44 (substituted by the Finance Act 1994 s 7(6); and amended by the Value Added Tax Act 1994 s 100(1), Sch 14 para 12).

56 le the tribunal established under the Wireless Telegraphy Act 1949 s 9 (as amended): Tribunals and Inquiries Act 1992 Sch 1 Pt I para 45.

UPDATE

55-57 The Council on Tribunals

The Council on Tribunals and the Scottish Committee of the Council on Tribunals are abolished and replaced by the Administrative Justice and Tribunals Council: see Tribunals, Courts and Enforcement Act 2007 ss 44, 45, Sch 7; and PARA 57A.

57 Tribunals within the purview of the Council on Tribunals

TEXT AND NOTES--Also within the purview of the Council on Tribunals are gender recognition panels constituted under the Gender Recognition Act 2004 Sch 1: Tribunals and Inquiries Act 1992 Sch 1 para 21AA (added by Gender Recognition Act 2004 Sch 1 para 9).

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733. Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions), see PARA 196A.

TEXT AND NOTE 7--Reference to banking omitted: 1992 Act Sch 1 para 4 repealed by SI 2001/3649.

TEXT AND NOTE 9--Reference to building societies omitted: 1992 Act Sch 1 para 6 repealed: SI 2001/3649.

NOTE 10--SI 1996/1678 Schedule para 37 amended: SI 2008/2683.

NOTE 12--Repeal of 1984 Act Pt III now in force: SI 2001/3852 (England), SI 2002/920 (Wales).

TEXT AND NOTE 13--Reference to Commons Commissioners and assessors omitted: 1992 Act Sch 1 para 9 repealed by Commons Act 2006 Sch 6 Pt 1 (not yet in force).

NOTE 14--Now refers to the Competition Appeal Tribunal established under the Enterprise Act 2002 s 12: 1992 Act Sch 1 para 9A (substituted by Enterprise Act 2002 Sch 25 para 27(4)).

NOTE 18--Reference to dairy produce quota tribunals omitted: 1992 Act Sch 1 para 13 repealed by SI 2007/477).

NOTE 19--Reference to the Data Protection Tribunal is now to the Information Tribunal and reference is also made to the tribunal's jurisdiction under the Freedom of Information Act 2000 s 57: 1992 Act Sch 1 para 14 (amended by 2000 Act Sch 2 para 10(b)).

NOTE 20--1996 Act s 476, Sch 34 repealed: Education Act 2002 s 215(2), Sch 22, Pt 3.

NOTE 28--Reference to 1999 Act ss 56, 57 is now to the Nationality, Immigration and Asylum Act 2002 ss 81, 100: 1992 Act Sch 1 Pt I para 22 (amended by the 2002 Act Sch 7 para 17).

TEXT AND NOTE 29--Omitted: Courts Act 2003 Sch 8 para 360, Sch 10.

TEXT AND NOTE 22--1992 Act Sch 1 Pt I para 17 substituted: Enterprise Act 2002 Sch 25 para 27(4).

NOTE 23--1986 Act repealed: SI 2001/3649. Day now appointed: SI 2001/2364.

TEXT AND NOTE 27--Reference to friendly societies omitted: 1992 Act Sch 1 (amended by SI 2001/3649).

NOTE 27--1992 Act s 59 substituted: SI 2001/2617.

NOTE 28--Now the Asylum and Immigration Tribunal established under the Nationality, Immigration and Asylum Act 2002 s 81: 1992 Act Sch 1 Pt 1 para 22 (replaced by the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 Sch 2 para 7(3).

TEXT AND NOTE 29--Omitted. 1992 Act Sch 1 Pt 1 para 23 repealed: Courts Act 2003 Sch 8 para 360, Sch 10.

NOTE 32--Tribunals and Inquiries Act 1992 Sch 1 Pt I para 27 repealed: SI 2009/1307.

NOTE 34--1992 Act Sch 1 Pt 1 para 28 amended: Local Government and Public Involvement in Health Act 2007 Sch 16 para 8 (in force 1 October 2009: SI 2008/3110).

NOTE 35--1939 Act s 109 further amended: Constitutional Reform Act 2005 Sch 4 para 23. See also s 19, Sch 7 para 4.

NOTE 39--Reference to the National Health Service Tribunal established under the National Health Service Act 1977 s 46 is now to the Family Health Services Appeal Authority constituted under the National Health Service Act 2006 s 169: Health and Social Care Act 2001 Sch 5 para 10; National Health Service (Consequential Provisions) Act 2006 Sch 1 para 157(c). 1992 Act Sch 1 Pt 1 para 33 further amended: National Health Service (Consequential Provisions) Act 2006 Sch 1 para 157(a), (b); SI 2007/961. SI 1992/664 reg 3 amended: SI 2006/562, SI 2008/1700.

NOTE 43--1947 Act repealed: Fire and Rescue Services Act 2004 Sch 2. References to Pensions Compensation Board and Occupational Pensions Authority omitted, and statutory tribunals concerned with pensions now include the Pensions Regulator established by the Pensions Act 2004 s 1; the Pensions Regulator Tribunal established by s 102; the Board of the Pension Protection Fund established by s 107 in respect of its functions under or by virtue of s 207 or any enactment in force in Northern Ireland corresponding to s 207; the Ombudsman for the Board of the Pension Protection Fund

in respect of his functions under or by virtue of s 213 or any enactment in force in Northern Ireland corresponding to s 213: 1992 Act Sch 1 para 35 (amended by 2004 Act Sch 12 para 8(4), Sch 13 Pt 1).

NOTE 45--1992 Act Sch 1 Pt 1 para 36A further amended: Serious Organised Crime and Police Act 2005 Sch 4 para 62, Sch 17 Pt 2.

NOTE 46--Day now appointed: SI 2001/4150, SI 2002/920, SI 2003/152.

NOTE 50--Reference to a parking adjudicator appointed under the Road Traffic Act 1991 s 73(3)(a) is now to an adjudicator appointed for the purposes of the Traffic Management Act 2004 Pt 6 (ss 72-93) (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 888); the tribunals concerned with road traffic also include a road user charging adjudicator appointed under the Road User Charging (Enforcement and Adjudication) (London) Regulations 2001, SI 2001/2313, reg 3 (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 361); and a bus lane adjudicator appointed in relation to England by virtue of regulations made under the Transport Act 2000 s 144 (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 898); 1992 Act Sch 1 Pt 1 para 40 (amended by the Traffic Management Act 2004 Sch 11 para 5 (in force in relation to Wales: SI 2006/2826); the Tribunals and Inquiries (Road User Charging Adjudicators) (London) Order 2003, SI 2003/756; and the Tribunals and Inquiries (Bus Lane Adjudicators) (England) Order 2005, SI 2005/2758).

TEXT AND NOTE 56--Entry relating to wireless telegraphy repealed: Communications Act 2003 Sch 19.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/3. NON-JUDICIAL REDRESS IN RESPECT OF ADMINISTRATIVE ACTION/(7) THE COUNCIL ON TRIBUNALS/57A. Oversight of administrative justice system, tribunals and inquiries.

57A. Oversight of administrative justice system, tribunals and inquiries.

1. The Administrative Justice and Tribunals Council

There is to be a council to be known as the Administrative Justice and Tribunals Council¹.

¹ Tribunals, Courts and Enforcement Act 2007 s 44(1). For further provision see s 44(2), Sch 7 Pt 1 (membership and committees of the Council), Sch 7 Pt 2 (functions of the Council), Sch 7 Pt 3 (Council to be consulted on rules for listed tribunals) and Sch 7 Pt 4 (interpretation). See also the Administrative Justice and Tribunals Council (Listed Tribunals) Order 2007, SI 2007/2951 (amended by SI 2008/2683, SI 2009/1307, SI 2009/1834, SI 2009/1835, SI 2009/3040); and the Administrative Justice and Tribunals Council (Listed Tribunals) (Wales) Order 2007, SI 2007/2876.

2. Abolition of the Council on Tribunals

The following are abolished: (1) the Council on Tribunals, and (2) the Scottish Committee of the Council on Tribunals¹. The Lord Chancellor may by order transfer to the Administrative Justice and Tribunals Council the property, rights and liabilities of (a) the Council on Tribunals; (b) the Scottish Committee of the Council on Tribunals².

¹ Tribunals, Courts and Enforcement Act 2007 s 45(1). In consequence of s 45(1), the Tribunals and Inquiries Act 1992 ss 1-4 cease to have effect: 2007 Act s 45(2), Sch 23 Pt 1.

2 Ibid s 45(3). As to orders under Pt 1 (ss 1-49) generally see s 49.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/4. JUDICIAL CONTROL

4. JUDICIAL CONTROL

UPDATE

58-157 Judicial Control

Material relating to this part has been revised and published under the title JUDICIAL REVIEW vol 61 (2010).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(1) LIABILITY/(i) Contract and Restitution/179. General principles.

5. LIABILITY AND PROTECTION

(1) LIABILITY

(i) Contract and Restitution

179. General principles.

Contracts entered into by the Crown and other public bodies for the procurement of goods and services and the execution of public works are to some extent governed by special statutory and common law rules¹. The procedural rules in respect of actions against the Crown are governed by the Crown Proceedings Act 1947, which provides that any claim against the Crown which might have been enforced, subject to the fiat, by petition of right or by any statutory proceeding abolished by the Act, may now be enforced as of right and without the fiat by proceedings taken in accordance with the Act². As the petition of right covered the recovery of a debt or liquidated sum due under any contract or statute³, an unliquidated sum due by statute⁴, damages for breach of contract⁵, and property in the hands of the Crown⁶, the Crown will generally be amenable to proceedings in contract or restitution. Although the ordinary principles of the law of contract are relevant to contracts made with the Crown and public authorities, certain special considerations attach to the contractual capacity of the Crown and other public bodies. A public body cannot by contract fetter its right or duty to exercise a discretion vested in it by law⁷, although this principle appears to be limited to contracts which are incompatible with the discharge of its functions⁸ and so will not normally include commercial contracts⁹. The provision of funds by Parliament is not a condition precedent to the validity of contracts entered into by the Crown¹⁰, although payment cannot be made until the expenditure has been authorised by Parliament¹¹. Public bodies cannot enter into contracts which are beyond their powers¹² and the manner in which a public body enters into a contract may be controlled¹³. There are a number of special rules relating to contracts of service with the Crown¹⁴.

1 *Pfizer Corp v Ministry of Health* [1965] AC 512 at 536-537, [1965] 1 All ER 450 at 455, HL, per Lord Reid, at 544-545 and 462 per Lord Evershed, at 548 and 463 per Lord Pearce, at 552 and 466 per Lord Upjohn and at 571 and 478 per Lord Wilberforce; *Lane v Cotton* (1701) 1 Ld Raym 646; *Whitfield v Lord Le Despencer* (1778) 2 Cowp 754; *Gibson v East India Co* (1839) 5 Bing NC 262; *Triefus & Co Ltd v Post Office* [1957] 2 QB 352, [1957] 2 All ER 387, CA; *Willmore and Willmore v South-Eastern Electricity Board* [1957] 2 Lloyd's Rep 375. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 387.

2 See the Crown Proceedings Act 1947 s 1; and CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) para 110 et seq. For a petition of right presented after the Crown Proceedings Act 1947 see *Franklin v A-G* [1974] QB 185, [1973] 1 All ER 879. For the circumstances in which disputes with the Crown or public authorities should be dealt with by way of judicial review see para 71 ante.

3 *Thames Ironworks and Shipbuilding Co Ltd v R* (1869) 10 B & S 33. See also CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) para 111.

4 *A-G v De Keyser's Royal Hotel Ltd* [1920] AC 508, HL. See also CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) para 111.

5 *Thomas v R* (1874) LR 10 QB 31 at 36. See also CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) para 111.

6 *Feather v R* (1865) 6 B & S 257 at 294-295. See further para 181 post; and CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) para 111.

7 *Rederiaktiebolaget Amphitrite v R* [1921] 3 KB 500; *Mulliner v Midland Rly Co* (1879) 11 Ch D 611; *Ayr Harbour Trustees v Oswald* (1883) 8 App Cas 623, HL; *York Corp v Henry Leatham & Sons Ltd* [1924] 1 Ch 557; cf *Board of Trade v Temperley Steam Shipping Co Ltd* (1926) 26 Ll L Rep 76 at 78 (affd (1927) 27 Ll L Rep 230, CA); *Birkdale District Electric Supply Co Ltd v Southport Corp* [1926] AC 355, HL; *Wm Cory & Son Ltd v City of London Corp* [1951] 2 KB 476, [1951] 2 All ER 85, CA; *Crown Lands Comrs v Page* [1960] 2 QB 274 at 291-294, [1960] 2 All ER 726 at 735-736, CA, per Devlin LJ; *Stourcliffe Estate Co Ltd v Bournemouth Corp* [1910] 2 Ch 12, CA; *Dowty Boulton Paul Ltd v Wolverhampton Corp* [1971] 2 All ER 277, [1971] 1 WLR 204; *Windsor and Maidenhead Royal Borough Council v Brandrose Investments Ltd* [1983] 1 All ER 818, [1983] 1 WLR 509, CA; *R v Hammersmith and Fulham London Borough Council, ex p Beddowes* [1987] QB 1050, [1987] 1 All ER 369, CA. See further *Kirklees Metropolitan Borough Council v Yorkshire Woollen District Transport Co Ltd* (1978) 77 LGR 448 (agreement not to exercise local authority's powers embodied in schedule to Private Act); and para 33 ante. As to the scope of the doctrines of waiver and estoppel in regard to public bodies see para 23 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 6.

8 *British Transport Commission v Westmorland County Council* [1958] AC 126, [1957] 2 All ER 353, HL; *Birkdale District Electric Supply Co Ltd v Southport Corp* [1926] AC 355 at 364, HL, per Lord Birkenhead; *Board of Trade v Temperley Steam Shipping Co Ltd* (1926) 26 Ll L Rep 76; affd (1927) 27 Ll L Rep 230, CA; see also *Stourcliffe Estate Co Ltd v Bournemouth Corp* [1910] 2 Ch 12, CA; *R v Hammersmith and Fulham London Borough Council, ex p Beddowes* [1987] QB 1050, [1987] 1 All ER 369, CA; *Devonport Borough Council v Robbins* [1979] 1 NZLR 1. With regard to undertakings incompatible with statutory duties see *R v Liverpool Corp, ex p Liverpool Taxi Fleet Operators' Association* [1972] 2 QB 299, [1972] 2 All ER 589, CA; and para 33 ante.

9 *Rederiaktiebolaget Amphitrite v R* [1921] 3 KB 500 at 503 per Rowlatt J; *Birkdale District Electric Supply Co Ltd v Southport Corp* [1926] AC 355 at 371, HL, per Lord Sumner; see also *Storer v Manchester City Council* [1974] 3 All ER 824, [1974] 1 WLR 1403, CA; *Gibson v Manchester City Council* [1979] 1 All ER 972, [1979] 1 WLR 294, HL.

10 This was the view of the High Court of Australia in *New South Wales v Bardolph* (1934) 52 CLR 455, disapproving the dictum of Shee J in *Churchward v R* (1865) LR 1 QB 173 at 209 and approving the dictum of Cockburn CJ in that case, at 200; followed in *Quintessence Co-Ordinators (Pty) Ltd v Government of the Republic of Transkei* 1993 (3) SA 184. A number of ambiguous dicta in *Commercial Cable Co v Government of Newfoundland* [1916] 2 AC 610, PC; *Mackay v A-G for British Columbia* [1922] 1 AC 457, PC, and *A-G v Great Southern and Western Rly Co of Ireland* [1925] AC 754, HL, may be taken to support the view taken in *New South Wales v Bardolph* supra. See also *Australian Woollen Mills Ltd v Commonwealth of Australia* [1955] 3 All ER 711, [1956] 1 WLR 11, PC; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 6.

11 *New South Wales v Bardolph* (1934) 52 CLR 455 at 474, Aust HC, per Evatt J; Crown Proceedings Act 1947 s 37(1) (expenditure to be defrayed out of money provided by Parliament); CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 387.

12 *Rhyl UDC v Rhyl Amusements Ltd* [1959] 1 All ER 257, [1959] 1 WLR 465; *Cudgen Rutile (No 2) Pty Ltd v Chalk* [1975] AC 520, [1975] 2 WLR 1, PC (Crown in Australia could not contract for sale of interests in Crown lands except pursuant to powers granted by statute; the sale of mining leases without recourse to statutory

mechanism accordingly could not create a valid contract). A person entering into a contract with a local authority, however, is not 'bound to inquire whether the standing orders of the authority ... have been complied with, and non-compliance with such orders shall not invalidate any contract entered into by or on behalf of the authority': see the Local Government Act 1972 s 135(4) (see LOCAL GOVERNMENT vol 69 (2009) PARA 492); and see *North West Leicestershire District Council v East Midlands Housing Association* [1981] 3 All ER 364, [1981] 1 WLR 1396, CA. This provision does not cover all cases: see eg *Crédit Suisse v Allerdale Borough Council* [1997] QB 306, [1996] 4 All ER 129, CA. See now the Local Government (Contracts) Act 1997 which provides the contracting powers with legal remedies even if the contract is ultra vires the local authority, provided the contract is a 'certified contract' within the meaning of s 2(2): see LOCAL GOVERNMENT vol 69 (2009) PARA 412 et seq.

The powers of a public body to contract were significantly extended by the provisions of the Deregulation and Contracting Out Act 1994 Pt II (ss 69-79) (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARAS 407-410.

As to the doctrine of estoppel in relation to the exercise of powers see *Western Fish Products Ltd v Penwith District Council* [1981] 2 All ER 204, CA; and para 23 ante.

13 See for example the regime imposed on certain procurement contracts of public bodies under the Public Works Contracts Regulations 1991, SI 1991/2680 (as amended); the Public Services Contracts Regulations 1993, SI 1993/3228 (as amended); and the Public Supply Contracts Regulations 1995, SI 1995/201 (as amended). See further CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 6.

14 *Kodeeswaran v A-G of Ceylon* [1970] AC 1111, [1970] 2 WLR 456, PC; *Knight v A-G* [1979] ICR 194, EAT; *Council of Civil Service Unions v Minister for the Civil Service* [1985] AC 374, [1984] 3 All ER 935, HL; *R v Civil Service Appeal Board, ex p Bruce* [1989] 2 All ER 907, [1989] ICR 171, CA; *McClaren v Home Office* [1990] ICR 824, CA; *R v Lord Chancellor's Department, ex p Nangle* [1992] 1 All ER 897, [1991] ICR 743, DC. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 387; EMPLOYMENT vol 39 (2009) PARA 7.

UPDATE

179-196 Liability

Civil sanctioning powers may be conferred on certain regulators in relation to specific offences: see Regulatory Enforcement and Sanctions Act 2008 Pt 3 (ss 36-71); and PARA 196A.

179 General principles

NOTE 13--SI 1991/2680, SI 1993/3228 and SI 1995/201 (all as amended) replaced by Public Contracts Regulations 2006, SI 2006/5: see BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS vol 4(3) (Reissue) PARA 23A.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(1) LIABILITY/(i) Contract and Restitution/180. Contracts by public officers.

180. Contracts by public officers.

Where any person enters into a contract in his capacity as a servant of the Crown, or as agent for the public, he cannot be made personally liable upon such contract, either directly¹, or upon an implied warranty of authority², unless from the particular circumstances of the case it appears that the public servant intended to contract personally and not as agent, in which case he would be liable on the contract³. Whether he does so contract is a question of fact⁴. Being in the service of the Crown does not give a right to act for and on behalf of the Crown in all matters which concern the Crown; he must have express or implied⁵, or, probably, apparent⁶, authority to act on behalf of the Crown.

1 See generally *Macbeath v Haldimand* (1786) 1 Term Rep 172 at 182 (colonial governor); *Lutterloh v Halsey* (undated) (commissary general); and *Savage v Lord North* (undated) (First Lord of the Treasury) (both cited in *Macbeath v Haldimand* supra at 180 by Lord Mansfield CJ); *Unwin v Wolseley* (1787) 1 Term Rep 674 (captain of a man of war); *Myrtle v Beaver* (1800) 1 East 135 (captain of a troop of cavalry); *Rice v Chute* (1801) 1 East 579 at 582 (captain of a troop of cavalry); *Carter v Hall* (1818) 2 Stark 361 (purser of a man of war); *Allen v Waldegrave* (1818) 2 Moore CP 621 (justices of the peace); *Gidley v Lord Palmerston* (1822) 7 Moore CP 91 (Secretary of State); *O'Grady v Cardwell* (1872) 20 WR 342 (Secretary of State); *Jones v Hope* (1880) 3 TLR 247, CA (volunteer colonel); *Palmer v Hutchinson* (1881) 6 App Cas 619, PC (deputy commissioner general), where the previous cases are reviewed; *Hosier Bros v Earl of Derby* [1918] 2 KB 671, CA (Secretary of State); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 388. See also AGENCY vol 1 (2008) PARA 158. As to the issue of a mandamus (now a mandatory order: see para 117 note 3 ante) to compel the issue of an order for the repayment of overpaid income tax see *Income Tax Special Purposes Comrs v Pemsel* [1891] AC 531, HL; and CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) para 134.

2 *Dunn v Macdonald* [1897] 1 QB 401 (affd [1897] 1 QB 555, CA); *Jones v Hope* (1880) 3 TLR 247, CA (where the same rule was applied to a case where the intention of the parties was to make a contract with 'a corps' of volunteers, although such contract was a legal impossibility); *The Prometheus* (1949) 82 Ll L Rep 859, CA.

3 *Samuel Bros Ltd v Whetherly* [1907] 1 KB 709 (affd [1908] 1 KB 184, CA) (goods supplied to commanding officer of a volunteer corps); *National Bank of Scotland Ltd v Shaw* 1913 SC 133; *Dunn v Macdonald* [1897] 1 QB 401, and on appeal [1897] 1 QB 555 at 557, CA, per Chitty LJ; see also *Van Rooyen v Vander Reit* (1838) 2 Moo PCC 177 (surveyor's fees).

4 *Samuel Bros Ltd v Whetherly* [1907] 1 KB 709 (affd [1908] 1 KB 184, CA); *Cross v Williams* (1862) 7 H & N 675; cf *Thompson v Pearce* (1819) 1 Brod & Bing 25; *Clutterbuck v Coffin* (1842) 3 Man & G 842; *Auty v Hutchinson* (1848) 6 CB 266; *Keate v Temple* (1797) 1 Bos & P 158; *Prosser v Allen* (1819) Gow 117.

5 *A-G for Ceylon v Silva* [1953] AC 461, PC.

6 As the Crown may, in some circumstances, be bound by estoppel (see *Robertson v Minister of Pensions* [1949] 1 KB 227, [1948] 2 All ER 767; and para 23 ante), the doctrine of apparent authority should apply to the Crown, provided that the representation of authority is made by an officer with authority to bind the Crown (see *A-G for Ceylon v Silva* [1953] AC 461 at 479, PC). See generally AGENCY vol 1 (2008) PARA 140.

UPDATE

179-196 Liability

Civil sanctioning powers may be conferred on certain regulators in relation to specific offences: see Regulatory Enforcement and Sanctions Act 2008 Pt 3 (ss 36-71); and PARA 196A.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(1) LIABILITY/(i) Contract and Restitution/181. Restitution.

181. Restitution.

Claims lie in restitution against a public servant or public body as they do against a private individual¹. Payments made under mistake of law may be recovered in the same way as those paid under mistake of fact². Payments may also be recovered where there is a total failure of consideration³. Money paid following an ultra vires demand by a public authority will be recoverable, subject to defences⁴. Where an individual uses his position in order to earn money, the individual may be ordered to account to the Crown⁵.

1 *Twyford v Manchester Corpn* [1946] Ch 236, [1946] 1 All ER 621. Such claims may be brought against the Crown by virtue of the Crown Proceedings Act 1947 s 1: see CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) para 110 et seq. As to restitution generally see RESTITUTION.

2 See *Kleinwort Benson Ltd v Lincoln City Council* [1999] 2 AC 349, [1998] 4 All ER 513, HL; and MISTAKE vol 32 (2005 Reissue) para 11; RESTITUTION vol 40(1) (2007 Reissue) para 11 et seq.

3 See *Westdeutsche Landesbank Girozentrale v Islington London Borough Council* [1996] AC 669, [1996] 2 All ER 961, HL. As to failure of consideration see CONTRACT vol 9(1) (Reissue) para 992; RESTITUTION vol 40(1) (2007 Reissue) para 87 et seq.

4 See *Woolwich Equitable Building Society v IRC* [1993] AC 70, [1992] 3 All ER 737, HL; and RESTITUTION vol 40(1) (2007 Reissue) para 58 et seq.

5 *Reading v A-G* [1951] AC 507, [1951] 1 All ER 617, HL (member of armed services); *A-G v Blake* [2000] 4 All ER 385, [2000] 3 WLR 625, HL (former member of secret services); *A-G v Goddard* (1929) 98 LJB 743 (policeman); *A-G for Hong Kong v Reid* [1994] 1 AC 324, [1994] 1 All ER 1, PC (acting Director of Public Prosecutions).

UPDATE

179-196 Liability

Civil sanctioning powers may be conferred on certain regulators in relation to specific offences: see Regulatory Enforcement and Sanctions Act 2008 Pt 3 (ss 36-71); and PARA 196A.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(1) LIABILITY/(ii) Tort/A. RESPONSIBILITIES OF PUBLIC OFFICERS AND AUTHORITIES/182. The Crown.

(ii) Tort

A. RESPONSIBILITIES OF PUBLIC OFFICERS AND AUTHORITIES

182. The Crown.

At common law the general rule is that the Crown enjoys an immunity from proceedings in tort¹. The Crown Proceedings Act 1947, however, subjects the Crown in relation to Her Majesty's government in the United Kingdom² or the Scottish Administration³, to civil liability as if it were a private person of full age and capacity⁴, in respect of: (1) torts committed by its servants or agents⁵; (2) any breach of the common law duties of an employer to his servants or agents⁶; (3) any breach of the common law duties attaching to the ownership, occupation, possession or control of property⁷; and (4) any failure to comply with a statutory duty binding both upon the Crown and upon persons other than the Crown and its officers⁸. There are savings in respect of acts done under prerogative or statutory powers, in particular under powers exercisable for defence or maintaining the efficiency of the armed forces⁹. There are restrictions on proceedings against the Crown in respect of death or personal injury caused to or by a member of the armed forces¹⁰, and in respect of the discharge of responsibilities of a judicial nature and the execution of judicial process¹¹.

1 *Viscount Canterbury v A-G* (1842) 1 Ph 306; *Tobin v R* (1864) 16 CBNS 310; *Feather v R* (1865) 6 B & S 257. An action may be available against a Crown servant in his personal capacity (see para 185 post) but the proceedings will be dismissed, even though the Crown stands behind the defendant, if the servant owes no

legal duty to the claimant: *Adams v Naylor* [1946] AC 543, [1946] 2 All ER 241, HL; *Royster v Cavey* [1947] KB 204, [1946] 2 All ER 642, CA; *M v Home Office* [1994] 1 AC 377, [1993] 3 All ER 537, HL. See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 388; CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) para 101.

2 Crown Proceedings Act 1947 s 40(2)(b). See also *Mutasa v A-G* [1980] QB 114, [1979] 3 All ER 257; *Trawnik v Ministry of Defence* [1984] 2 All ER 791 (cf *Franklin v A-G* [1974] QB 185, [1973] 1 All ER 879). See further *Town Investments Ltd v Department of the Environment* [1978] AC 359, [1977] 1 All ER 813, HL. The Crown Proceedings Act 1947 preserves the immunity from proceedings in tort of the Sovereign in a private capacity: see s 40(1); and CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) para 103. A certificate of a Secretary of State that any alleged liability arises otherwise than in respect of Her Majesty's government in the United Kingdom is conclusive: s 40(3). For the meaning of 'United Kingdom' see para 14 note 19 ante.

3 Ibid s 40(2)(b) (added by the Scotland Act 1998 s 125(1), Sch 8 para 7(1), (3)(a)). For the meaning of 'the Scottish Administration' see the Scotland Act 1998 s 126(6).

4 See the Crown Proceedings Act 1947 s 2 (amended by the Statute Law Repeals Act 1981; the Scotland Act 1998 (Consequential Modifications) Order 1999, SI 1999/1042, art 4, Sch 2 para 4(1), (2); and the Scotland Act 1998 (Consequential Modifications) (No 2) Order 1999, SI 1999/1820, art 1(2)). The law relating to indemnity, contribution, joint and several tortfeasors and contributory negligence binds the Crown: see s 4 (as amended); Civil Liability (Contribution) Act 1978 s 5; and CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) para 837. Proceedings by or against the Crown are not affected by the demise of the Crown: Crown Proceedings Act 1947 s 32. No express provision is made in that Act, the Law Reform (Miscellaneous Provisions) Act 1934 s 1 (as amended), or the Fatal Accidents Act 1976, for the case where a person dies possessed of a cause of action against the Crown, and no reported decision on this point has been found. Some statutes affecting the common law of tort (eg the Law Reform (Personal Injuries) Act 1948, the Occupiers' Liability Acts 1957 and 1984, the Employer's Liability (Defective Equipment) Act 1969, the Animals Act 1971, the Defective Premises Act 1972, the Congenital Disabilities (Civil Liability) Act 1976 s 5, the Torts (Interference with Goods) Act 1977, the Foreign Limitation Periods Act 1984, the Limitation Act 1980, the Latent Damage Act 1986 and the Private International Law (Miscellaneous Provisions) Act 1995) expressly bind the Crown. Other statutes (eg the Defamation Acts 1952 and 1996) do not bind the Crown expressly and it is doubtful whether they do so by necessary implication: see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 384; STATUTES vol 44(1) (Reissue) para 1321.

5 Crown Proceedings Act 1947 s 2(1)(a). On the question whether a minister is 'the Crown' or an officer of the Crown see *M v Home Office* [1994] 1 AC 377, [1993] 3 All ER 537, HL; *Town Investments Ltd v Department of the Environment* [1978] AC 359, [1977] 1 All ER 813, HL; *Pearce v Secretary of State for Defence* [1988] AC 755 at 790, [1988] 2 All ER 348 at 365-366, CA, per Ralph Gibson LJ; affd [1988] AC 755, [1988] 2 All ER 348, HL. See further *British Medical Association v Greater Glasgow Health Board* [1989] AC 1211, [1989] 1 All ER 984, HL. The proviso to the Crown Proceedings Act 1947 s 2 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 383) limits Crown liability to circumstances where the servant or agent would have been liable apart from the Act: see *Corney v Minister of Labour* [1958] CLY 2656. 'Agent' includes an independent contractor employed by the Crown: Crown Proceedings Act 1947 s 38(2). Nothing in that Act, however, is to subject the Crown to any greater liabilities in respect of the acts or omissions of any independent contractor employed by the Crown than those to which it would be subject if it were a private person: s 40(2)(d). For an example of Crown liability for an independent contractor see *Darling v A-G* [1950] 2 All ER 793. The Crown Proceedings Act 1947 does not resolve the problems regarding the meaning of 'servant' of the Crown at common law; as to these see *Bank voor Handel en Scheepvaart NV v Administrator of Hungarian Property* [1954] AC 584 at 616, [1954] 1 All ER 969 at 982, HL, per Lord Reid, at 628 and 989 per Lord Tucker and at 631 and 991 per Lord Keith of Avonholm; CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 388. Public corporations are generally not Crown servants: *Gilbert v Trinity House Corp* (1886) 17 QBD 795, DC (not Crown servant); *Metropolitan Meat Industry Board v Sheedy* [1927] AC 899, PC (board constituted under New South Wales Act not Crown servant); *Tamlin v Hannaford* [1950] 1 KB 18, [1949] 2 All ER 327, CA (former British Transport Commission not Crown servant); *British Broadcasting Corp v Johns* [1965] Ch 32, [1964] 1 All ER 923, CA (British Broadcasting Corporation not Crown servant); *Moukattaf v British Overseas Airways Corp* [1967] 1 Lloyd's Rep 396 (BOAC not Crown servant); see also *Malins v Post Office* [1975] ICR 60 (Post Office worker not Crown servant); *Foster v British Gas plc* [1988] ICR 584, CA (British Gas, constituted in its nationalised form under the Gas Act 1972 was not a 'state authority' for the purposes of the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 189); *Rolls-Royce plc v Doughty* [1992] ICR 538, CA; *National Union of Teachers v Governing Body of St Mary's Church of England (Aided) Junior School* [1997] ICR 334, CA; Case 152/84 *Marshall v Southampton and South West Hampshire Area Health Authority (Teaching)* [1986] QB 401, [1986] 2 All ER 584, ECJ; and CORPORATIONS vol 9(2) (2006 Reissue) para 1115. In each case the court will scrutinise the statutory provisions, and some incorporated bodies may be found to be Crown servants or agents for certain purposes: *Pfizer Corp v Ministry of Health* [1965] AC 512, [1965] 1 All ER 450, HL; *Glasgow Corp v Central Land Board* 1956 SC 1, HL. In some cases (eg 'actual fault or privity' under the Merchant Shipping Act 1894 (repealed)) the act of a Crown servant or agent may, by virtue of his position, be attributed to the Crown itself: *Admiralty v Divina (Owners)*, *The Truculent* [1952] P 1 at 22, [1951] 2 All ER 968 at 981 per Willmer J (Admiralty liable for action of Third Sea Lord). The Crown is liable only for the torts of those

officers who are appointed directly or indirectly by the Crown and paid out of specified public funds: Crown Proceedings Act 1947 s 2(6) (amended by the Statute Law (Repeals) Act 1981). 'Officers' are defined as including servants and ministers of the Crown: Crown Proceedings Act 1947 s 38(2). This excludes the police: cf *Fisher v Oldham Corpn* [1930] 2 KB 364; *Lewis v Cattle* [1938] 2 KB 454, [1938] 2 All ER 368, DC; *Farah v Metropolitan Police Comr* [1998] QB 65, [1997] 1 All ER 289, CA (see also Case 222/84 *Johnston v Chief Constable of the Royal Ulster Constabulary* [1987] QB 129 at 154, [1986] 3 All ER 135 at 161, ECJ). As to the liability of a chief officer of police see para 185 post; POLICE vol 36(1) (2007 Reissue) para 105. Functions conferred upon an officer of the Crown by law are deemed to have been conferred by virtue of instructions given by the Crown: Crown Proceedings Act 1947 s 2(3); cf the position of other public authorities (see para 184 post). The Crown may claim the benefit of any Act which negatives or limits the amount of the liability of its officer: s 2(4).

6 Ibid s 2(1)(b). The Sex Discrimination Act 1975, the Race Relations Act 1976 and the Disability Discrimination Act 1995 apply to acts done by or for purposes of a Minister of the Crown or government department and to acts done on behalf of the Crown by a statutory body, or a person holding a statutory office, as they apply to a private person: see the Sex Discrimination Act 1975 ss 85(1), 85A, 85B (ss 85A, 85B as added and amended); the Race Relations Act 1976 ss 75(1), 75A, 75B (ss 75A, 75B as added and amended); the Disability Discrimination Act 1995 ss 64-66 (s 65 as amended); and DISCRIMINATION vol 13 (2007 Reissue) paras 359, 376, 457, 458, 553, 555. Certain parts of the Employment Rights Act 1996 (including the part relating to unfair dismissal: see Pt X (ss 94-134A) (as amended)) apply to persons in Crown employment (except persons in the naval, military or air forces of the Crown, and persons in respect of whom the Secretary of State has issued a certificate excepting their employment from the protection of the Act for the purpose of safeguarding national security): see ss 191 (as amended), 192 (as substituted and amended), 193 (as amended); *Hughes v Department of Health and Social Security* [1985] AC 776, [1985] ICR 419, HL; and EMPLOYMENT vol 40 (2009) PARA 136.

7 Crown Proceedings Act 1947 s 2(1)(c). These duties, as regards lawful visitors, have been replaced by the Occupiers' Liability Acts 1957 and 1984 which bind the Crown no 'further than the Crown is made liable in tort by the Crown Proceedings Act 1947' (Occupiers' Liability Act 1957 s 6). The Crown's liability for breach of the statutory duties to lawful visitors now falls under the Crown Proceedings Act 1947 s 2(2) (see the text and note 8 infra). Other common law duties (eg in respect of liability under the rule in *Rylands v Fletcher* (1868) LR 3 HL 330, nuisance and negligence arising from property) apply under the Crown Proceedings Act 1947 s 2(1) (c): see NEGLIGENCE vol 33 (Reissue) para 601; NUISANCE vol 34 (Reissue) para 40; TORT vol 45(2) (Reissue) para 422. For the liability of the Crown in its capacity as a highway authority see the Highways Act 1980, especially ss 1, 41, 58, 327 (ss 1, 58 as amended); *Bartlett v Department of Transport* (1984) 83 LGR 579; para 190 post; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) para 49 et seq. There is no liability in respect of property vesting in the Crown involuntarily by operation of law until the Crown has taken possession or control or entered into occupation: Crown Proceedings Act 1947 s 40(4). The Defective Premises Act 1972 s 5 binds the Crown, but as regards the Crown's liability in tort does so no 'further than the Crown is made liable in tort by the Crown Proceedings Act 1947': see LANDLORD AND TENANT vol 27(1) (2006 Reissue) para 475.

8 Crown Proceedings Act 1947 s 2(2). It must be shown that the statute binds the Crown either expressly or by necessary implication: *Cooper v Hawkins* [1904] 2 KB 164; *Bombay Province v Bombay Municipal Corpn* [1947] AC 58, PC; see further STATUTES vol 44(1) (Reissue) para 1321. For general principles as to civil actions for breach of statutory duty see *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633, [1995] 3 All ER 353, HL; *Cutler v Wandsworth Stadium Ltd* [1949] AC 398, [1949] 1 All ER 544, HL; *Ministry of Housing and Local Government v Sharp* [1970] 2 QB 223, [1970] 1 All ER 1009, CA; para 186 post; and TORT vol 45(2) (Reissue) para 395 et seq. The Crown is civilly liable for infringement with its authority of a patent, registered trade mark, registered service mark, the right in a registered design, a design right or copyright by a servant or agent of the Crown: see the Crown Proceedings Act 1947 s 3(1) (substituted by the Copyrights, Designs and Patents Act 1988 s 303(1), Sch 7 para 4; and amended by the Trade Marks Act 1994 s 106(2), Sch 5); COPYRIGHT, DESIGN RIGHT AND RELATED RIGHTS vol 9(2) (2006 Reissue) para 410; PATENTS AND REGISTERED DESIGNS vol 79 (2008) PARA 525; TRADE MARKS AND TRADE NAMES vol 48 (2007 Reissue) para 417.

9 Crown Proceedings Act 1947 s 11 (amended by the Defence (Transfer of Functions) (No 1) Order 1964, SI 1964/488, art 2, Sch 1 Pt II). See also CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 369; ARMED FORCES vol 2(2) (Reissue) para 55.

10 Crown Proceedings Act 1947 s 10. This provision is repealed, subject to the power of the Secretary of State to revive it in circumstances of imminent national danger or great emergency or for the purposes of any warlike operations in the world outside the United Kingdom, by the Crown Proceedings (Armed Forces) Act 1987 ss 1, 2. The repeal applies to anything suffered by a person in consequence of an act or omission committed before 15 May 1987, the date on which the Crown Proceedings (Armed Forces) Act 1987 was passed. On the Crown Proceedings Act 1947 s 10 (repealed) see *Pearce v Secretary of State for Defence* [1988] AC 755, [1988] 2 All ER 348, HL (overruling *Bell v Secretary of State for Defence* [1986] QB 322, [1985] 3 All ER 661); *Adams v War Office* [1955] 3 All ER 245, [1955] 1 WLR 1116; and see ARMED FORCES vol 2(2) (Reissue) para 55.

11 Crown Proceedings Act 1947 s 2(5). For the meaning of 'judicial' see para 4 note 6 ante. See also *Welsh v Chief Constable of the Merseyside Police* [1993] 1 All ER 692 (Crown Prosecution Service lawyer unable to rely on the Crown Proceedings Act 1947 s 2(5) where he failed to inform a magistrates' court that an offence had already been taken into consideration in the Crown Court, since this was an administrative, not a judicial, function).

UPDATE

179-196 Liability

Civil sanctioning powers may be conferred on certain regulators in relation to specific offences: see Regulatory Enforcement and Sanctions Act 2008 Pt 3 (ss 36-71); and PARA 196A.

182 The Crown

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 6--The Race Relations Act 1976 s 75(1) does not apply in relation to ss 19B-19F, 71, 71A-71E, 76 or Sch 1A, all of which bind the Crown; and, so far as they relate to those provisions, the other provisions of the Race Relations Act 1976 are to be construed accordingly: s 75(2A), (2B) (both added by the Race Relations (Amendment) Act 2000 Sch 2 para 17). See further DISCRIMINATION vol 13 (2007 Reissue) PARAS 457, 469-470 and 491).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(1) LIABILITY/(ii) Tort/A. RESPONSIBILITIES OF PUBLIC OFFICERS AND AUTHORITIES/183. Vicarious responsibility of subordinates in service of Crown.

183. Vicarious responsibility of subordinates in service of Crown.

A servant of the Crown is not responsible for the torts of those in the same employment as himself¹. He is not, therefore, liable for the acts of his subordinates² unless those acts were directly ordered by him in such a way as to make them his own³, or unless the acts were necessary for the execution of his orders⁴. It seems that corporations which are servants or agents of the Crown are liable in respect of torts authorised by the governing body of the corporation⁵.

1 See *Pearce v Secretary of State for Defence* [1988] AC 755 at 790, [1988] 2 All ER 348 at 365, CA, per Ralph Gibson LJ; affd on other grounds [1988] AC 755, [1988] 2 All ER 348, HL. Thus, the First Lord of the Admiralty is not liable for false imprisonment by his subordinates (*Fraser v Balfour* (1918) 87 LJB 1116, HL), or the Commissioners of the Admiralty for trespass by subordinates (*Raleigh v Goschen* [1898] 1 Ch 73). An admiral is not liable for wrongful seizure by a captain under his command (*The Mentor* (1799) 1 Ch Rob 179); nor is the captain of a warship liable for the negligent navigation of his first officer (*Nicholson v Mounsey and Symes* (1812) 15 East 384); nor, at common law, was the Postmaster-General liable for the negligence or dishonesty of letter-carriers or telegraphists (*Lane v Cotton* (1701) 1 Ld Raym 646 ('each officer is responsible only for himself'); *Whitfield v Lord Le Despencer* (1778) 2 Cowp 754; *Bainbridge v Postmaster-General* [1906] 1 KB 178, CA; *Hamilton v Clancy* [1914] 2 IR 514). For the position of the Post Office see para 184 post; and POST OFFICE vol 36(2) (Reissue) para 87. As to the position of the Procurator General under the Prize Court Rules 1939, SR & O 1939/1466 (see PRIZE vol 36(2) (Reissue) para 852) see *The Oscar II* [1920] AC 748, PC. A sheriff is liable

for the acts of his subordinates in executing writs etc: see *Brown v Copley* (1844) 8 Scott NR 350; and *SHERIFFS* vol 42 (Reissue) para 1133.

2 He is, however, liable for the torts of persons who are his private servants and are not acting in public employment: *Lord North's Case* (1557) 2 Dyer 161a.

3 *Raleigh v Goschen* [1898] 1 Ch 73 at 77 per Romer J; *Wright & Son v Lethbridge* (1890) 63 LT 572, CA; see also *Mersey Docks and Harbour Board Trustees v Gibbs* (1866) LR 1 HL 93 at 111 per Blackburn J; *Marshall Shipping Co v Board of Trade* [1923] 2 KB 343, CA.

4 *Glynn v Houston* (1841) 2 Man & G 337 at 343, 346 (whether false imprisonment necessary incident of order to search premises).

5 *Mackenzie-Kennedy v Air Council* [1927] 2 KB 517 at 532-533, CA, per Atkin LJ, explaining *Roper v Public Works Comrs* [1915] 1 KB 45.

UPDATE

179-196 Liability

Civil sanctioning powers may be conferred on certain regulators in relation to specific offences: see Regulatory Enforcement and Sanctions Act 2008 Pt 3 (ss 36-71); and PARA 196A.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(1) LIABILITY/(ii) Tort/A. RESPONSIBILITIES OF PUBLIC OFFICERS AND AUTHORITIES/184. Responsibility of authorities other than the Crown.

184. Responsibility of authorities other than the Crown.

A public authority, which is not a servant or agent of the Crown, is vicariously responsible for its own servants¹ and agents² in the same way as any other employer. Whether for these purposes an official appointed under statutory authority or acting in pursuance of statutory duties is the servant of the body which appointed him depends on the construction of the statute in each case³. At common law a police officer is not a servant of the police authority⁴, but by statute the chief officer of police for any police area is liable in respect of torts committed by constables under his direction and control in the performance of their functions⁵. A public authority may also be made liable in respect of breach of common law or statutory duties imposed upon the authority itself⁶, or for torts which it has authorised⁷, or ratified⁸. The liability in tort of the Post Office in relation to postal services is excluded by statute⁹.

1 *Racz v Home Office* [1994] 2 AC 45, [1994] 1 All ER 97, HL; *Stovin v Wise* [1996] AC 923 at 946, [1996] 3 All ER 801 at 821, HL, per Lord Hoffmann; *Mersey Docks and Harbour Board Trustees v Gibbs* (1866) LR 1 HL 93 at 114; *Scott v Manchester Corp* (1857) 2 H & N 204, Ex Ch; and see TORT vol 45(2) (Reissue) para 319. Teachers employed by local authorities have been treated as having contracts of service: see *Smith v Martin and Kingston upon Hull Corp* [1911] 2 KB 775, CA; *Jackson v LCC and Chappell* (1912) 28 TLR 359, CA; *Phelps v Hillingdon London Borough Council* [2000] 4 All ER 504, [2000] 3 WLR 776, HL; and EDUCATION. Such contract is with the local authority and not with the school's governing body: *Askew v Governing Body of Clifton Middle School* [1999] IRLR 708, CA. See also *Miles v Wakefield Metropolitan District Council* [1987] AC 539, [1987] 1 All ER 1089, HL (superintendent registrar of births, deaths and marriages is an office-holder, but his position is similar to that of an employee). Hospital authorities have been held responsible for the negligence of professional staff (*Gold v Essex County Council* [1942] 2 KB 293, [1942] 2 All ER 237, CA (radiographer); *Collins v Hertfordshire County Council* [1947] KB 598, [1947] 1 All ER 633 (resident medical officer); *Cassidy v Ministry of Health* [1951] 2 KB 343, [1951] 1 All ER 574, CA (resident medical officer); *Roe v Minister of Health* [1954] 2 QB 66, [1954] 2 All ER 131, CA (anaesthetist); *Whitehouse v Jordan* [1981] 1 All ER 267, [1981] 1 WLR 246, HL (senior registrar); *Maynard v West Midlands Regional Health Authority* [1985] 1 All ER 635, [1984] 1 WLR 634,

HL (consultant)), although there will be liability for consultants who are not regular members of the hospital staff only if the hospital authority is treated as being under a personal non-delegable duty to see that care is taken (*Gold v Essex County Council* supra at 302 and 242 per Lord Greene MR; *Cassidy v Ministry of Health* supra at 365 and 587 per Denning LJ; and *Roe v Minister of Health* supra at 82 and 137 per Denning LJ); see further MEDICAL PROFESSIONS vol 30(1) (Reissue) para 205. As to scope of employment see eg *Garlick v Knottingley UDC* (1904) 68 JP 494, DC (medical officer of health); *Toole (an infant) v Sherbourne Puffes Ltd, Newport Corpn, Third Party* [1971] RTR 479, CA (school crossing patrol); and TORT vol 45(2) (Reissue) para 329.

2 In general there will be no liability for the negligence of an apparently competent independent contractor: *Arthy v Coleman* (1857) 30 LTOS 101; *Wilkinson v Llandaff and Dinas Powis RDC* [1903] 2 Ch 695, CA; *St James and Pall Mall Electric Light Co Ltd v R* (1904) 73 LJB 518; and, as to a harbour master, see *East London Harbour Board v Colonial Fisheries Co Ltd* [1908] AC 271, PC; and *The Rhosina* (1885) 10 PD 131, CA. Cf *Pitts v Kingsbridge Highway Board* (1871) 25 LT 195. See further AGENCY vol 1 (2008) PARA 111; TORT vol 45(2) (Reissue) para 815.

3 *Stanbury v Exeter Corpn* [1905] 2 KB 838, DC (not liable for inspector of animals). See also *Metcalf v Hetherington* (1860) 5 H & N 719 (not liable for harbour clerk); *Lambert v Great Eastern Rly Co* [1909] 2 KB 776, CA (liable for railway constable); *Marshall v Lindsey County Council* [1935] 1 KB 516 at 534-535, CA (discussion of liability for medical officer of health) (revsd on another point [1937] AC 97, [1936] 2 All ER 1076, HL); *Ministry of Housing and Local Government v Sharp* [1970] 2 QB 223, [1970] 1 All ER 1009, CA (liable for registry clerk). As to liability for firemen see *Joyce v Metropolitan Board of Works* (1881) 44 LT 811, DC; *Ward v LCC* [1938] 2 All ER 341; and FIRE SERVICES vol 18(2) (Reissue) para 6.

4 *Fisher v Oldham Corpn* [1930] 2 KB 364; *Lewis v Cattle* [1938] 2 KB 454, [1938] 2 All ER 368, DC.

5 See the Police Act 1996 s 88(1); and POLICE vol 36(1) (2007 Reissue) para 105. See also eg *Knightley v Johns* [1982] 1 All ER 851, [1982] 1 WLR 349, CA; *Rivers v Cutting* [1982] 3 All ER 69, [1982] 1 WLR 1146, CA; *Rigby v Chief Constable of Northamptonshire* [1985] 2 All ER 985, [1985] 1 WLR 1242; *Hill v Chief Constable of West Yorkshire* [1988] QB 60, [1987] 1 All ER 1173, CA (affd [1989] AC 53, [1988] 2 All ER 238, HL); *Waters v Metropolitan Police Comr* [2000] 4 All ER 934, [2000] 1 WLR 1607, HL.

6 *Carmarthenshire County Council v Lewis* [1955] AC 549, [1955] 1 All ER 565, HL (teacher not negligent in allowing child to escape onto highway, but local authority in breach of personal duty as occupier of premises adjoining highway); and see NEGLIGENCE vol 33 (Reissue) para 610; TORT vol 45(2) (Reissue) para 845. See also *Ching v Surrey County Council* [1910] 1 KB 736, CA (duty to keep school playground in repair); *Brown v Nelson* (1970) 69 LGR 20 (approved school not liable if it sends pupils to other premises believed to be reasonably safe and competently staffed); *Ministry of Housing and Local Government v Sharp* [1970] 2 QB 223, [1970] 1 All ER 1009, CA; *Blue Circle Industries plc v Ministry of Defence* [1999] Ch 289, [1998] 3 All ER 385, CA; cf *Murphy v Brentwood District Council* [1991] 1 AC 398, [1990] 2 All ER 908, HL (overturning *Dutton v Bognor Regis UDC* [1972] 1 QB 373, [1972] 1 All ER 462, CA; and *Anns v Merton London Borough Council* [1978] AC 728, [1977] 2 All ER 492, HL); and see para 189 post.

7 *Campbell v Paddington Corpn* [1911] 1 KB 869, DC (highways board liable for directing servant to remove gate from plaintiff's private road wrongly believed to be public highway); *O'Neill v Droham and Waterford County Council* [1914] 2 IR 495, CA (local authority which illegally rated plaintiff's house liable for trespass by rate collector to whom they gave distress warrant). See also TORT vol 45(2) (Reissue) para 323.

8 See *Barns v St Mary, Islington, Guardians* (1911) 76 JP 11; *Harrisons and Crossfield Ltd v London and North Western Rly Co* [1917] 2 KB 755 at 758; and TORT vol 45(2) (Reissue) para 323.

9 Post Office Act 1969 s 29(1) (amended by the British Telecommunications Act 1981 ss 70(7), 87, 89, Sch 3 para 51(2), Sch 6 Pt II; and the Telecommunications Act 1984 s 99(2)). The exclusion of liability extends to any liability in bailment for detention of mail: *American Express Co v British Airways Board* [1983] 1 All ER 557, [1983] 1 WLR 701 (cf *Harold Stephen & Co Ltd v Post Office* [1978] 1 All ER 939, [1977] 1 WLR 1172, CA). A similar exclusion will apply to any universal postal supplier under the Postal Services Act 2000: see s 90. See further POST OFFICE vol 36(2) (Reissue) para 87.

UPDATE

179-196 Liability

Civil sanctioning powers may be conferred on certain regulators in relation to specific offences: see Regulatory Enforcement and Sanctions Act 2008 Pt 3 (ss 36-71); and PARA 196A.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(1) LIABILITY/(ii) Tort/A. RESPONSIBILITIES OF PUBLIC OFFICERS AND AUTHORITIES/185. Personal liability of officers.

185. Personal liability of officers.

A public officer¹ who commits a breach of his common law² or statutory duty³ may be liable to an action for damages⁴. Exemplary damages may be awarded in cases of oppressive, arbitrary or unconstitutional action by servants of the government⁵, including local government officials or the police, who may be described as exercising governmental functions⁶. However, they will not be awarded in actions for public nuisance or negligence⁷. It is no defence in an action for tort against a public officer that the tort was committed by order of the Crown or of a superior officer⁸. Protection from tortious liability is afforded to certain persons exercising judicial and related powers⁹. Persons acting in pursuance of legislation relating to mental health¹⁰, public health¹¹, the national health service¹², and postal services¹³ are protected in certain circumstances from civil liability. No officer can be made liable for advice given to the Crown in the performance of his duties, and evidence of any such advice may be subject to a claim of Crown privilege¹⁴.

1 See *Ministry of Housing and Local Government v Sharp* [1970] 2 QB 223 at 266, [1970] 1 All ER 1009 at 1019, CA, per Lord Denning MR and at 275 and 1024 per Salmon LJ ('Our English law does not allow a public officer to shelter behind a *droit administratif*'). See also Com Dig Action upon the Case for Misfeasance (A1); Action upon the Case for a Deceit (A6); *Smith v Winford* (1693) 1 Lut 96; *Rowning v Goodchild* (1773) 2 Wm Bl 906; *Henly v Lyme Corp* (1828) 5 Bing 91 at 107 per Best CJ; *M'Kinnon v Penson* (1853) 8 Exch 319 at 327; *Whitelegg v Richards* (1823) 2 B & C 45 (clerk of a debtor's court falsely issuing a discharge order); *Brasyer v Maclean* (1875) LR 6 PC 398 (sheriff issuing a false return to a writ, though without malice); *Raleigh v Goschen* [1898] 1 Ch 73; *Cobbett v Grey* (1849) 4 Exch 729. For actions against colonial governors see *Mostyn v Fabrigas* (1775) 1 Cowp 161; *Musgrave v Pulido* (1879) 5 App Cas 102, PC. For the liability for unlawful acts of a public officer generally see 2 Co Inst 186; Hawk PC 43; 3 Bl Com 254; *Feather v R* (1865) 6 B & S 257; *Hawley v Steele* (1877) 6 ChD 521; *Rogers v Rajendro Dutt* (1860) 13 Moo PCC 209.

2 See eg *Dutton v Bognor Regis UDC* [1972] 1 QB 373, [1972] 1 All ER 462, CA (building inspector).

3 See eg *Ministry of Housing and Local Government v Sharp* [1970] 2 QB 223, [1970] 1 All ER 1009, CA (Registrar of Local Land Charges not liable); *Gibraltar Sanitary Comrs v Orfila* (1890) 15 App Cas 400 at 411, PC, per Lord Watson; and see Com Dig Action upon Statute (F) ('so in every case where a statute enacts, or prohibits a thing for the benefit of a person, he shall have a remedy'); *Watkins v Naval Colliery Co (1897) Ltd* [1912] AC 693, HL.

4 As to the issue of injunctions against Crown officers and servants see *M v Home Office* [1994] 1 AC 377, [1993] 3 All ER 537, HL; and CIVIL PROCEDURE vol 11 (2009) PARA 354.

5 See *Rookes v Barnard* [1964] AC 1129 at 1226, [1964] 1 All ER 367 at 410, HL, per Lord Devlin; *Cassell & Co Ltd v Broome* [1972] AC 1027, [1972] 1 All ER 801, HL; see also *Wilks v Wood* (1763) Lofft 1; *Huckle v Money* (1763) 2 Wils 205 (general warrant cases); *Benson v Frederick* (1766) 3 Burr 1845 (colonel ordered soldier flogged to vex another officer); *A-G of St Christopher, Nevis and Anguilla v Reynolds* [1980] AC 637, [1979] 3 All ER 129, PC (false imprisonment under state of emergency); *Bradford City Metropolitan Council v Arora* [1991] 2 QB 507, [1991] 3 All ER 545, CA (Sikh woman subjected to unlawful sex and race discrimination in applying for a position at a local authority college); and see *Holden v Chief Constable of Lancashire* [1987] QB 380, [1986] 3 All ER 836, CA (wrongful arrest fell within the category of 'oppressive, arbitrary and unconstitutional action by the servants of the government'; accordingly, exemplary damages could be awarded regardless of whether there was, additionally, oppressive behaviour); see also *Treadaway v Chief Constable of West Midlands* (1994) Times, 25 October.

6 *Cassell & Co Ltd v Broome* [1972] AC 1027 at 1076-1078, [1972] 1 All ER 801 at 829-830, HL, per Lord Hailsham of St Marylebone LC, at 1087-1088 and 838 per Lord Reid, at 1130 and 873 per Lord Diplock, and at 1134 and 877 per Lord Kilbrandon.

7 *AB v South West Water Services Ltd* [1993] QB 507, [1993] 1 All ER 609, CA; considered in *Kuddus v Chief Constable of Leicestershire* [2000] All ER (D) 155, CA.

8 *Rogers v Rajendro Dutt* (1860) 13 Moo PCC 209; *Madrazo v Willes* (1820) 3 B & Ald 353; *Cobbett v Grey* (1849) 4 Exch 729; *Raleigh v Goschen* [1898] 1 Ch 73 at 77 per Romer J; *Winter v Bancks* (1901) 65 JP 468. As to the immunity of servants or agents of the Crown in respect of acts of state see *A-G v Nissan* [1970] AC 179, [1969] 1 All ER 629, HL; *Johnstone v Pedlar* [1921] 2 AC 262, HL; and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 383; CROWN PROCEEDINGS AND CROWN PRACTICE vol 12(1) (Reissue) para 103.

9 See para 197 post. The sheriff and similar officers are liable for non-obedience to writs directed to them: see *Hooper v Lane* (1847) 10 QB 546, Ex Ch; and SHERIFFS vol 42 (Reissue) para 1164. See also *Douglass v Yallop* (1759) 2 Burr 722; *Herbert v Pagett* (1662) Lev 64; *Irwin v Grey* (1862) 3 F & F 635.

10 Unless they act in bad faith or without reasonable care: see the Mental Health Act 1983 s 139 (as amended); and MENTAL HEALTH vol 30(2) (Reissue) para 407. The protection extends to cover acts done by the staff of special hospitals in discharging their day-to-day duties in the control, or purported control, of patients: *Pountney v Griffiths* [1976] AC 314 at 336, [1975] 2 All ER 881 at 888, HL, per Lord Edmund-Davies. See also *Carter v Metropolitan Police Comr* [1975] 2 All ER 33, [1975] 1 WLR 507, CA (onus of proof on the claimant or applicant to show bad faith or lack of reasonable care); *Kynaston v Secretary of State for the Home Department* (1981) 73 Cr App Rep 281, CA.

11 See the Public Health Act 1875 s 265 (as amended); the Public Health Act 1936 s 305 (members and officers of local authority); and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 105.

12 National Health Service Act 1977 s 125 (as amended) (members and officers of health authorities, special health authorities and NHS trusts). This does not bar an action against an authority or a committee, in its corporate capacity, for the negligence of a servant: *Bullard v Croydon Hospital Group Management Committee* [1953] 1 QB 511, [1953] 1 All ER 596.

13 Post Office Act 1969 s 29(2), (3) (both as amended) (officers, servants, sub-postmasters, persons engaged in the carriage of mail and their officers, servants, agents and sub-contractors immune in same circumstances as Post Office). See para 184 note 9 ante; and POST OFFICE vol 36(2) (Reissue) para 87.

14 *Irwin v Grey* (1862) 3 F & F 635; *West v West* (1911) 27 TLR 476, CA (the Lord Chamberlain cannot be compelled to disclose in evidence communications made to him in his official capacity). As to the right and duty to claim privilege from disclosure for information and documents touching advice to the Crown etc see *Conway v Rimmer* [1968] AC 910, [1968] 1 All ER 874, HL; *Alfred Crompton Amusement Machines Ltd v Comrs of Customs and Excise (No 2)* [1974] AC 405, [1973] 2 All ER 1169, HL; *D v National Society for the Prevention of Cruelty to Children* [1978] AC 171, [1977] 1 All ER 589, HL; *Balfour v Foreign and Commonwealth Office* [1994] 2 All ER 588, [1994] 1 WLR 681, CA; *Lonrho plc v Fayed (No 4)* [1994] QB 775, [1994] 1 All ER 870, CA. See also *Bennett v Metropolitan Police Comr* [1995] 2 All ER 1, [1995] 1 WLR 488.

UPDATE

179-196 Liability

Civil sanctioning powers may be conferred on certain regulators in relation to specific offences: see Regulatory Enforcement and Sanctions Act 2008 Pt 3 (ss 36-71); and PARA 196A.

185-190 Personal liability of officers ... Failure to exercise powers

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

185 Personal liability of officers

TEXT AND NOTE 12--National Health Service Act 1977 s 125 now National Health Service Act 2006 s 69.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(1) LIABILITY/(ii) Tort/B. ACTION FOR BREACH OF STATUTORY DUTY AND FOR STATUTORY COMPENSATION/186. Statutory torts.

B. ACTION FOR BREACH OF STATUTORY DUTY AND FOR STATUTORY COMPENSATION

186. Statutory torts.

The question whether the breach of a duty imposed on a public authority or public officer by statute gives rise to civil liability, will be determined according to the same principles as apply to the creation of statutory torts in general¹. Where a statute granting a power to provide public services imposes correlative duties, the courts are reluctant to allow enforcement of these duties by private actions for damages². If a right of action is found to exist the claimant must prove that he is a member of the class of persons whom the statute is designed to protect³, that the damage suffered is within the scope of the mischief against which the statute is aimed⁴, that the defendant is in breach of the statutory obligation (which may be strict⁵, sometimes described as absolute, or simply a duty to use due diligence⁶), and that the breach of duty caused damage, although exceptionally a breach of duty is actionable per se⁷.

Different considerations apply where the breach complained of is a breach of a duty conferred by European Union law. Liability will attach only where the law infringed was intended to confer rights on individuals; the breach was sufficiently serious, there being a manifest and grave disregard by the public authority of the limits on its discretion; and there was a direct causal link between the breach and the damage sustained⁸.

¹ The statutory tort may be expressly created, as for example in the Mineral Workings (Offshore Installations) Act 1971 s 11 (as amended) (see FUEL AND ENERGY vol 19(3) (2007 Reissue) para 1637), and the Building Act 1984 s 38 (see STATUTES vol 44(1) (Reissue) para 1360). This was recommended by the Law Commission in its paper *Interpretation of Statutes* (Law Com no 21) (1967) para 38. Alternatively, a statute may expressly state that no right of action for breach of statutory duty will exist in respect of it: see eg the Safety of Sports Grounds Act 1975 s 13 (see STATUTES vol 44(1) (Reissue) para 1360); and the Guard Dogs Act 1975 s 5(2) (a) (see STATUTES vol 44(1) (Reissue) para 1360). For the general principles to be applied where there are no express words see *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633, [1995] 3 All ER 353, HL; *Cutler v Wandsworth Stadium Ltd* [1949] AC 398, [1949] 1 All ER 544, HL; and TORT vol 45(2) (Reissue) para 398. Where the statute re-enacts a common law duty the claimant may usually proceed under either the common law or statutory duty: *Wolverhampton New Waterworks Co v Hawkesford* (1859) 28 LJCP 242 at 246. The existence of a statutory penalty which cannot be awarded to the claimant is sometimes said to indicate the existence of a statutory tort (see *Groves v Lord Wimborne* [1898] 2 QB 402, CA), but at other times it does not (*Atkinson v Newcastle and Gateshead Waterworks Co* (1877) 2 Ex D 441, CA).

Where a remedy, for example by way of complaint to a minister or some other body, is granted by the statute concerned, it will almost invariably exclude a right of action for breach of statutory duty: *Jones v Department of Employment* [1989] QB 1, [1988] 1 All ER 725, CA. See also *Southwark London Borough Council v Williams* [1971] Ch 734, [1971] 2 All ER 175, CA; *Wyatt v Hillingdon London Borough Council* (1978) 76 LGR 727, CA (National Assistance Act 1948 (repealed)). But see *Meade v Haringey London Borough Council* [1979] 2 All ER 1016, [1979] 1 WLR 637, CA (complaint to Secretary of State against temporary closure of school under the Education Act 1944 s 99 (repealed: see now the Education Act 1996 s 497 (as amended) (see EDUCATION vol 15(1) (2006 Reissue) para 58)) did not exclude the right of action). See also *Booth & Co (International) Ltd v National Enterprise Board* [1978] 3 All ER 624; *Strable v Dartford Borough Council* [1984] JPL 329, CA.

For the appropriate procedure for an action for breach of statutory duty against a public authority see *O'Reilly v Mackman* [1983] 2 AC 237, [1982] 3 All ER 1124, HL; *Cocks v Thanet District Council* [1983] 2 AC 286, [1982] 3 All ER 1135, HL; *Davy v Spelthorne Borough Council* [1984] AC 262, [1983] 3 All ER 278, HL; *Avon County Council v Buscott* [1988] QB 656, [1988] 1 All ER 841, CA; *Roy v Kensington and Chelsea and Westminster Family Practitioner Committee* [1992] 1 AC 624, [1992] 1 All ER 705, HL; *Mercury Communications Ltd v Director General of Telecommunications* [1996] 1 All ER 575, [1996] 1 WLR 48, HL; *British Steel plc v Customs and Excise*

Comrs[1997] 2 All ER 366, CA; *Steed v Secretary of State for the Home Department*[2000] 3 All ER 226, [2000] 1 WLR 1169, HL. See also para 71 ante.

2 *Atkinson v Newcastle and Gateshead Waterworks Co* (1877) 2 Ex D 441, CA (no liability for failure to maintain pressure in water pipes); cf *Dawson & Co v Bingley UDC* [1911] 2 KB 149, CA (liability for fire plug plate with misleading directions); and *Read v Croydon Corp*n [1938] 4 All ER 631 (liability for supply of impure water). The distinction between these cases appears to rest on the old non-feasance rule: see para 190 post.

3 Eg homeless persons under the Housing (Homeless Persons) Act 1977 (repealed: see now the Housing Act 1996 Pt VII (ss 175-218) (as amended)). See *Cocks v Thanet District Council* [1983] 2 AC 286, [1982] 3 All ER 1135, HL. See also *Dyson v Kerrier District Council* [1980] 3 All ER 313, [1980] 1 WLR 1205, CA; *De Falco v Crawley Borough Council* [1980] QB 460, [1980] 1 All ER 913, CA; *Re Tafazzul Islam* [1983] 1 AC 688, [1981] 3 All ER 901, HL; *Lambert v Ealing London Borough Council* [1982] 2 All ER 394, [1982] 1 WLR 550, CA; *Din (Taj) v Wandsworth London Borough Council* [1983] 1 AC 657, [1981] 3 All ER 881, HL; *KA and SBM Feakins Ltd v Dover Harbour Board* [1998] 36 LS Gaz R 31, 10 Admin LR 665. See also *Investors in Industry Commercial Properties Ltd v South Bedfordshire District Council* [1986] QB 1034, [1986] 1 All ER 787, CA; and TORT vol 45(2) (Reissue) para 399.

4 *Gorris v Scott* (1874) LR 9 Exch 125. See also *Calveley v Chief Constable of the Merseyside Police* [1989] AC 1228 at 1237, [1989] 1 All ER 1025 at 1029, HL, per Lord Bridge of Harwich; and TORT vol 45(2) (Reissue) para 400.

5 The courts lean against such a construction: see eg *Brown v National Coal Board* [1962] AC 574, [1962] 1 All ER 81, HL; *Ministry of Housing and Local Government v Sharp* [1970] 2 QB 223 at 273, [1970] 1 All ER 1009 at 1023, CA, per Salmon LJ and at 289-290 and 1036-1037 per Cross LJ.

6 *Geddis v Bann Reservoir Proprietors* (1878) 3 App Cas 430 at 449, HL; *Bagnall v London and North Western Ry Co* (1862) 1 H & C 544; *Shoreditch Corp v Bull* (1904) 90 LT 210, HL; *Dawson & Co v Bingley UDC* [1911] 2 KB 149, CA; *Butler (or Black) v Fife Coal Co Ltd* [1912] AC 149, HL; *Sharpness New Docks and Gloucester and Birmingham Navigation Co v A-G* [1915] AC 654, HL, where the dictum of Fletcher Moulton LJ in *Hertfordshire County Council v Great Eastern Ry Co* [1909] 2 KB 403 at 412, CA, was considered.

7 This is in cases of constitutional importance: *Ashby v White* (1703) 2 Ld Raym 938 (right to vote); *Ferguson v Earl of Kinnoull* (1842) 9 Cl & Fin 251, HL (right to have case heard).

8 Case C-6/90 *Francovich v Italy* [1995] ICR 722, ECJ; Case C-48/93 *R v Secretary of State for Transport, ex p Factortame Ltd (No 4)* [1996] QB 404, ECJ; applied in *R v Secretary of State for Transport, ex p Factortame Ltd (No 5)* [2000] 1 AC 524, [1999] 4 All ER 906, HL; and see Case C-392/93 *R v HM Treasury, ex p British Telecommunications plc* [1996] QB 615, ECJ; Case C-5/94 *R v Ministry of Agriculture, Fisheries and Food, ex p Hedley Lomas (Ireland) Ltd* [1997] QB 139, [1996] 3 WLR 787, ECJ; *Dillenkofer v Germany* (Joined Cases C-178, 179 and 188-190/94) [1997] QB 259, [1997] 2 WLR 253, ECJ. See also *Three Rivers District Council v Governor and Company of the Bank of England (No 3)* [2000] 3 All ER 1, [2000] 2 WLR 1220, HL.

UPDATE

179-196 Liability

Civil sanctioning powers may be conferred on certain regulators in relation to specific offences: see Regulatory Enforcement and Sanctions Act 2008 Pt 3 (ss 36-71); and PARA 196A.

185-190 Personal liability of officers ... Failure to exercise powers

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

186 Statutory torts

NOTE 8--See Case C-424/97 *Haim v Kassenzahnärztliche Vereinigung Nordrhein* [2002] 1 CMLR 247, ECJ (breach by professional association of dentists).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(1) LIABILITY/(ii) Tort/B. ACTION FOR BREACH OF STATUTORY DUTY AND FOR STATUTORY COMPENSATION/187. Compensation clauses.

187. Compensation clauses.

In a case where the legislature authorises interference with the rights of private persons, provision is generally made for the payment of compensation to persons injured¹. The effect of such a clause is normally to deprive persons injured of their ordinary rights of action and to substitute the remedy by way of compensation as regards matters within the scope of the clause². The absence of such a clause from an Act conferring powers affords an indication, though not a conclusive one³, that it was not intended to authorise interference with private rights⁴.

A clause providing for compensation for damage sustained by reason of the exercise of statutory powers covers acts done intentionally in the exercise of those powers⁵, and does not extend to acts done in excess thereof⁶. It extends only to acts which, if done without statutory authority, would have given rise to a cause of action⁷. Exceptionally, a compensation clause may impose an absolute obligation to pay compensation for damage however caused⁸.

1 *Metropolitan Asylum District Managers v Hill* (1881) 6 App Cas 193 at 203, HL. For examples of such legislation see the Land Compensation Act 1961; the Compulsory Purchase Act 1965; the Land Compensation Act 1973; the Acquisition of Land Act 1981; and the Housing Act 1985 Pt XVII (ss 578-603) (as amended). Since compensation clauses are intended by Parliament to protect the person whose rights are affected, they must be construed in favour of that person: *Chilton v Telford Development Corp* [1987] 3 All ER 992, [1987] 1 WLR 872, CA.

2 *Marriage v East Norfolk Rivers Catchment Board* [1950] 1 KB 284 at 308-309, [1949] 2 All ER 1021 at 1035, CA. Such a clause does not take away a right of action for negligence in respect of matters outside the scope of the clause: see para 191 post. A compensation clause may, however, be wide enough to cover damage by negligence: see *Bentley v Manchester, Sheffield and Lincolnshire Rly Co* [1891] 3 Ch 222; *Colac Corp v Summerfield* [1893] AC 187, PC; and infra. As to the circumstances in which a statutory remedy excludes a remedy at common law see generally STATUTES vol 44(1) (Reissue) para 1349.

3 *Edgington v Swindon Corp* [1939] 1 KB 86 at 89-90, [1938] 4 All ER 57 at 61-62 per Finlay LJ; *Allen v Gulf Oil Refining Ltd* [1981] AC 1001 at 1016, [1981] 1 All ER 353 at 359, HL, per Lord Edmund-Davies.

4 *Southampton and Itchin Floating Bridge and Roads Co v Southampton Local Board of Health* (1858) 8 E & B 801; *Clothier v Webster* (1862) 12 CBNS 790; *Metropolitan Asylum District Managers v Hill* (1881) 6 App Cas 193 at 203, HL; and see *Price's Patent Candle Co Ltd v LCC* [1908] 2 Ch 526, CA (on appeal sub nom *LCC v Price's Candle Co Ltd* (1911) 75 JP 329, HL); *Bell v Earl of Dudley* [1895] 1 Ch 182; *London and North Western Rly Co v Evans* [1893] 1 Ch 16, CA; *Hammersmith and City Rly Co v Brand* (1869) LR 4 HL 171 at 215; *Normanton Gas Co v Pope and Pearson Ltd* (1883) 32 WR 134, CA; *Evans v Manchester, Sheffield and Lincolnshire Rly Co* (1887) 36 ChD 626; *Consett Waterworks Co v Ritson* (1889) 22 QBD 702, CA; *Bradford Corp v Pickles* [1895] 1 Ch 145 at 152, CA (on appeal [1895] AC 587, HL); *Jordeson v Sutton, Southcoates and Drypool Gas Co* [1898] 2 Ch 614; *Baron v Portslade UDC* [1900] 2 QB 588, CA; *Belfast Corp v OD Cars Ltd* [1960] AC 490, [1960] 1 All ER 65, HL; *Minister of Housing and Local Government v Hartnell* [1965] AC 1134, [1965] 1 All ER 490, HL; *Manitoba Fisheries v R* (1978) 88 DLR (3d) 462, Can SC. For a case where there were no means of obtaining compensation see *Kenet and Avon Navigation Co v Witherington* (1852) 18 QB 531; and for a case where there was no provision for awarding it, and the plaintiff was held to be without remedy see *East Fremantle Corp v Annois* [1902] AC 213, PC. See also *James v United Kingdom* [1986] 8 EHRR 123, ECtHR (taking of property without payment of an amount reasonably related to value, though not necessarily actual market value, would usually constitute a disproportionate interference which is not justifiable under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) Cmd 8969) First Protocol, art 1 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 165)). See further COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 883 et seq; MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) para 252.

5 *Marriage v East Norfolk Rivers Catchment Board* [1950] 1 KB 284 at 309, [1949] 2 All ER 1021 at 1035, CA, per Jenkins LJ. See also *R v Lord Delamere etc, River Weaver Navigation Trustees* (1865) 29 JP 500 (affd sub nom *Lord Delamere v R* (1867) LR 2 HL 419); *Burgess v Northwich Local Board* (1880) 6 QBD 264, DC; *Piggott v Middlesex County Council* [1909] 1 Ch 134.

6 See COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 883.

7 See COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 883.

8 *J and J Makin Ltd v London and North Eastern Rly Co Ltd* [1943] KB 467, [1943] 1 All ER 645, CA (overflow from canal caused by act of God).

UPDATE

179-196 Liability

Civil sanctioning powers may be conferred on certain regulators in relation to specific offences: see Regulatory Enforcement and Sanctions Act 2008 Pt 3 (ss 36-71); and PARA 196A.

185-190 Personal liability of officers ... Failure to exercise powers

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(1) LIABILITY/(ii) Tort/C. ACTION FOR BREACH OF COMMON LAW DUTIES/188. Deliberate abuse of public office or authority.

C. ACTION FOR BREACH OF COMMON LAW DUTIES

188. Deliberate abuse of public office or authority.

The mere fact that a public officer or authority makes an ultra vires order or invalidly exercises statutory powers will not of itself found an action for damages¹.

Bad faith on the part of a public officer or authority will result in civil liability where the act would constitute a tort but for the presence of statutory authorisation², as Parliament intends statutory powers to be exercised in good faith and for the purpose for which they were conferred³. Proof of improper motive is necessary in respect of certain torts⁴ and may negative a defence of qualified privilege in respect of defamation⁵, but this is not peculiar to public authorities.

There is also an independent tort of misfeasance in public office⁶ which consists in the exercise of power as a public officer⁷ causing loss to the claimant where the officer either intends to injure the claimant⁸ or knows that he has no power to do the act complained of and that the act will probably injure the claimant⁹. The exercise of power may include an act, or an omission in the sense of an actual decision not to act¹⁰. There may be vicarious liability of the relevant governmental authority for the acts of the public official¹¹.

1 *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633, [1995] 3 All ER 353, HL; *Dunlop v Woollahra Municipal Council* [1982] AC 158, [1981] 1 All ER 1202, PC; *An Bord Bainne Co-operative Ltd v Milk Marketing Board* [1988] 1 FTLR 145, CA. See also *Lonrho Ltd v Shell Petroleum Co Ltd (No 2)* [1982] AC 173, [1981] 2 All ER 456, HL (not following *Beaudesert Shire Council v Smith* (1966) 120 CLR 145, [1966] ALR 1175, Aust HC, itself overruled in *Northern Territory v Mengel* (1995) 69 ALJR 527, Aust HC); *Bourgoin SA v Ministry of Agriculture, Fisheries and Food* [1986] QB 716, [1985] 3 All ER 585, CA (breach by minister of the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 30 did not give rise to a right to damages; cf *Garden Cottage Foods Ltd v Milk Marketing Board* [1984] AC 130, [1983] 2 All ER 770, HL); *Harris v Wyre Forest District Council* [1988] QB 835, [1988] 1 All ER 691, CA. Cf *Holgate-Mohammed v Duke* [1984] AC 437 at 443, [1984] 1 All ER 1054 at 1057, HL, per Lord Diplock (a police officer will not be liable for the tort of false imprisonment of an arrested person, unless his exercise of the discretion to arrest was ultra vires in the sense that it contravened the principles set out in *Associated Provincial Picture Houses Ltd v Wednesbury Corp* [1948] 1 KB 223, [1947] 2 All ER 680, CA: see para 86 ante).

A threat to do an ultra vires act may, however, amount to the tort of intimidation: *Gershman v Manitoba Vegetable Producers' Marketing Board* (1976) 69 DLR (3d) 114, Manitoba CA; *Central Canada Potash Co v A-G of Saskatchewan* (1978) 88 DLR (3d) 609, Can SC.

2 *Calveley v Chief Constable of the Merseyside Police* [1989] 1 All ER 1025 at 1030, [1989] 2 WLR 624 at 630, HL, per Lord Bridge of Harwich; *R v Askew* (1768) 4 Burr 2186; *Drewe v Coulton* (1787) 1 East 563; *Harman v Tappenden* (1801) 1 East 555; *Ackerley v Parkinson* (1815) 3 M & S 411; *Whitelegg v Richards* (1823) 2 B & C 45 at 52; *Henly v Lyme Corp* (1828) 5 Bing 91 at 107-108; *Tozer v Child* (1857) 7 E & B 377; *Partridge v General Medical Council of Education and Registration of the United Kingdom* (1890) 25 QBD 90, CA; cf *McGillivray v Kimber* (1915) 52 SCR 146, 26 DLR 164, Can SC; *Everett v Griffiths* [1921] 1 AC 631, HL. As to negligent exercise of powers see para 189 post. As to exemplary damages for oppressive, arbitrary or unconstitutional action by those exercising governmental functions see para 185 ante.

3 *Jones v Swansea City Council* [1989] 3 All ER 162 at 186, [1990] 1 WLR 54 at 85, CA, per Nourse LJ (revsd on the facts only [1990] 3 All ER 737 at 741, [1990] 1 WLR 1453 at 1458, HL, per Lord Lowry); *Galloway v London Corp* (1864) 2 De GJ & Sm 213 at 229 (on appeal (1866) LR 1 HL 34 at 43); *Westminster Corp v London and North Western Ry Co* [1905] AC 426, HL; *G Scammell and Nephew Ltd v Hurley* [1929] 1 KB 419, CA. As to abuse of discretion generally see paras 82-86 ante.

4 Eg conspiracy to injure (*Crofter Hand-Woven Harris Tweed Co Ltd v Veitch* [1942] AC 435, [1942] 1 All ER 142, HL); malicious abuse of legal process (*Mitchell v Jenkins* (1833) 5 B & Ad 588 at 595). Cf *Gregory v Portsmouth City Council* [2000] 1 AC 419, [2000] 1 All ER 560, HL (no tort of malicious prosecution of civil proceedings); *Bradford Corp v Pickles* [1895] AC 587 at 598, HL ('No use of property which would be legal if due to a proper motive can become illegal because it is prompted by a motive which is improper or even malicious'); see further TORT vol 45(2) (Reissue) para 844.

5 *Abrath v North Eastern Ry Co* (1886) 11 App Cas 247 at 253-254, HL. See also LIBEL AND SLANDER vol 28 (Reissue) para 153 et seq.

6 *Three Rivers District Council v Governor and Company of the Bank of England (No 3)* [2000] 3 All ER 1, [2000] 2 WLR 1220, HL; *Dunlop v Woollahra Municipal Council* [1982] AC 158, [1981] 1 All ER 1202, PC; *Bourgoin SA v Minister of Agriculture, Fisheries and Food* [1986] QB 716, [1985] 3 All ER 585, CA, especially at 777 and 624 per Oliver LJ; *Leroux v Lachine* [1942] Que SC 352 (city council liable for abuse of power in revoking dance-hall licence); *Roncarelli v Duplessis* [1952] 1 DLR 680 (Premier of Quebec liable for usurpation of power in ordering licensing authority to revoke restaurant licence of Jehovah's witness; for further proceedings see [1959] SCR 121, 16 DLR (2d) 689, Can SC). It should be noted, however, that (in the absence of conspiracy) the exercise of a common law right will not be rendered unlawful merely because of the improper motives of the person who exercises it: *Allen v Flood* [1898] AC 1, HL; *Rookes v Barnard* [1964] AC 1129 at 1172-1178, 1192, 1203, 1236-1237, [1964] 1 All ER 367 at 374-380, 389, 396, 416-417, HL; cf at 1215-1216 and 404-405 per Lord Devlin. See further TORT vol 45(2) (Reissue) para 844. See also *Nagle v Fielden* [1966] 2 QB 633, [1966] 1 All ER 689, CA (declaration, but not damages, in respect of alleged arbitrary and unreasonable sex discrimination by Stewards of the Jockey Club in exercise of discretion); cf *London Corp v Wolfe* (1916) 86 LJB 534 (refusal of licence to carry on employment on grounds of enemy origins of applicant upheld); *Weinberger v Inglis (No 2)* [1919] AC 606, HL (no judicial interference with alleged discrimination on grounds of German origin by Committee of Stock Exchange). The Race Relations Act 1976 renders unlawful discrimination on grounds of race, colour, or ethnic or national origins in respect of the provision of services and facilities, employment and housing and (subject to certain exceptions) applies to the Crown and other public authorities: see DISCRIMINATION vol 13 (2007 Reissue) para 445. The Sex Discrimination Act 1975 and the Disability Discrimination Act 1995 render unlawful similar discrimination on the grounds of sex and disability respectively: see DISCRIMINATION vol 13 (2007 Reissue) paras 337 et seq, 507 et seq.

7 This could include a public officer exercising private-law functions: *Jones v Swansea City Council* [1989] 3 All ER 162, [1990] 1 WLR 54, CA (local authority exercising private-law powers as a landlord).

8 le 'targeted malice, involving bad faith in the sense of the exercise of public power for an improper purpose': *Three Rivers District Council v Governor and Company of the Bank of England (No 3)* [2000] 3 All ER 1 at 8, [2000] 2 WLR 1220 at 1231, HL, per Lord Steyn.

9 le involving bad faith in as much as the public officer does not have an honest belief that the act is lawful: *Three Rivers District Council v Governor and Company of the Bank of England (No 3)* [2000] 3 All ER 1 at 8, [2000] 2 WLR 1220 at 1231, HL, per Lord Steyn.

10 *Three Rivers District Council v Governor and Company of the Bank of England (No 3)* [2000] 3 All ER 1 at 44, [2000] 2 WLR 1220 at 1269, HL, per Lord Hobhouse ('what is not covered is a mere failure, oversight or accident').

11 *Racz v Home Office*[1994] 2 AC 45, [1994] 1 All ER 97, HL (Home Office liable for misfeasance in public office by prison officers).

UPDATE

179-196 Liability

Civil sanctioning powers may be conferred on certain regulators in relation to specific offences: see Regulatory Enforcement and Sanctions Act 2008 Pt 3 (ss 36-71); and PARA 196A.

185-190 Personal liability of officers ... Failure to exercise powers

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

188 Deliberate abuse of public office or authority

NOTE 9--As to the necessity to prove loss or damage, see *Hussain v Chief Constable of West Mercia Constabulary*[2008] EWCA Civ 1205, [2008] All ER (D) 06 (Nov).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(1) LIABILITY/(ii) Tort/C. ACTION FOR BREACH OF COMMON LAW DUTIES/189. Negligence in relation to statutory powers.

189. Negligence in relation to statutory powers.

A right of action for negligence, nuisance, trespass or some other tort may exist where a public body fails to exercise statutory powers with reasonable care¹ so as to avoid causing unnecessary injury². A public body will be liable in negligence only if it exceeds the ambit of its discretion relating to the exercise of its power³. Even where a public body is prima facie in breach of its duty of care⁴ to a person, public policy may require that the public body should not be liable in negligence because it would not be fair, just and reasonable to impose liability in the circumstances⁵. A person will only have a right of action against a public body in respect of a statutory power if he is a member of a class for whose benefit or protection the statutory power exists⁶. In determining the existence of a duty of care for the purposes of the tort of negligence, the court will have regard to the interests both of the public body and of those likely to be damaged by the negligent exercise of its powers⁷. Although, in general, a public body will not be liable for the mere failure to exercise a discretionary power⁸, even though this

causes damage, it appears that a public body which assumes control over some activity is thereby placed under a duty to exercise its powers in respect of that activity properly and with reasonable care⁹. The standard of care will vary according to the circumstances¹⁰; in particular, it is not necessary for the public body to provide for every contingency¹¹. Liability of public bodies for unauthorised nuisance will depend upon the same general principles as apply to other persons¹², but it appears that the rules relating to dangerous escapes from land¹³ may be modified¹⁴, or even excluded¹⁵, in the case of public bodies exercising statutory powers.

1 *Blyth v Birmingham Waterworks Co* (1856) 11 Exch 781; *Geddis v Bann Reservoir (Proprietors)* (1878) 3 App Cas 430 at 445-456, HL, per Lord Blackburn; *East Suffolk Rivers Catchment Board v Kent* [1941] AC 74, [1940] 4 All ER 527, HL; *Peabody Donation Fund (Governors) v Sir Lindsay Parkinson & Co Ltd* [1985] AC 210, [1984] 3 All ER 529, HL; *Yuen Kun Yeu v A-G of Hong Kong* [1988] AC 175, [1987] 2 All ER 705, PC; *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633, [1995] 3 All ER 353, HL; *Stovin v Wise* [1996] 2 AC 923, [1996] 3 All ER 801, HL; *Barrett v Enfield London Borough Council* [1999] 3 All ER 193, [1999] 3 WLR 79, HL. See also *Leader v Moxon* (1773) 2 Wm Bl 924; *Coats v Clarence Rly Co* (1830) 1 Russ & M 181; *Drew v New River Co* (1834) 6 C & P 754; *Vaughan v Taff Vale Rly Co* (1860) 5 H & N 679; *Fremantle v London and North Western Rly Co* (1861) 10 CBNS 89; *Bagnall v London and North Western Rly Co* (1862) 1 H & C 544; *Manchester South Junction and Altrincham Rly Co v Fullarton* (1863) 14 CBNS 54; *Stapley v London, Brighton and South Coast Rly Co* (1865) LR 1 Exch 21; *R v Bradford Navigation Co* (1865) 6 B & S 631; *Dimmock v North Staffordshire Rly Co* (1866) 4 F & F 1058; *Cliff v Midland Rly Co* (1870) LR 5 QB 258; *Smith v London and South Western Rly Co* (1870) LR 6 CP 14; *Hammersmith and City Rly Co v Brand* (1869) LR 4 HL 171 at 185; *Hanson v Lancashire and Yorkshire Rly Co* (1872) 20 WR 297; *Foreman v Canterbury Corpn* (1871) LR 6 QB 214; *Dunn v Birmingham Canal Co* (1872) LR 8 QB 42; *Boughton v Midland and Great Western Rly of Ireland* (1873) IR 7 CL 169; *Joliffe v Wallasey Local Board* (1873) LR 9 CP 62; *Oliver v North Eastern Rly Co* (1874) LR 9 QB 409; *Arnold v Furness Rly Co* (1874) 22 WR 613; *Taylor v Greenhalgh* (1876) 24 WR 311, CA; *A-G v Furness Rly Co* (1878) 47 LJ Ch 776; *R v Williams* (1884) 9 App Cas 418, PC; *Gas Light and Coke Co v St Mary Abbott's, Kensington, Vestry* (1885) 15 QBD 1, CA; *Hurst v Taylor* (1885) 14 QBD 918, DC; *Snook v Grand Junction Waterworks Co Ltd* (1886) 2 TLR 308; *Evans v Manchester, Sheffield and Lincolnshire Rly Co* (1887) 36 Ch D 626; *Sadler v South Staffordshire and Birmingham District Steam Tramways Co* (1889) 23 QBD 17, CA; *Wisley v Aberdeen Harbour Comrs* (1887) 24 SLR 315; *Gibraltar Sanitary Comrs v Orfila* (1890) 15 App Cas 400 at 411, PC; *Port-Glasgow and Newark Sailcloth Co Ltd v Caledonian Rly Co* (1892) 29 SLR 577, HL; *Bligh v Rathnagar Drainage Board* (1898) 2 IR 205; *Victoria Corpn v Patterson, Victoria Corpn v Lang* [1899] AC 615, PC; *Marshall v Caledonian Rly Co* (1899) 36 SLR 845; *Lambert v Lowestoft Corpn* [1901] 1 KB 590; *Hawthorn Corpn v Kannuluik* [1906] AC 105, PC (discussed in *Hesketh v Birmingham Corpn* [1924] 1 KB 260, CA); *Bede Steam Ship Co v River Wear Comrs* [1907] 1 KB 310, CA; *Dawson & Co v Bingley UDC* [1911] 2 KB 149, CA; *Jones v Llanrwst UDC* [1911] 1 Ch 393 (followed in *Haigh v Deudraeth RDC* [1945] 2 All ER 661); *South Eastern and Chatham Rly Co v LCC* (1901) 84 LT 632, DC; *Crane v South Suburban Gas Co* [1916] 1 KB 33, DC; *Great Central Rly Co v Hewlett* [1916] 2 AC 511, HL; *Morrison v Sheffield Corpn* [1917] 2 KB 866, CA; *Boynton v Ancholme Drainage and Navigation Comrs* [1921] 2 KB 213, CA; *Howard-Flanders v Maldon Corpn* (1926) 135 LT 6, CA; *Dutton v Bognor Regis UDC* [1972] 1 QB 373, [1972] 1 All ER 462, CA; *Vicar of Writtle v Essex County Council* (1979) 77 LGR 656; *Bird v Pearce* [1979] RTR 369, CA; *Acres Ltd v WS Hattrell & Partners* [1983] QB 260, [1983] 1 All ER 17, CA; *Dennis v Charnwood Borough Council* [1983] QB 409, [1982] 3 All ER 486, CA; *Investors in Industry Commercial Properties Ltd v South Bedfordshire District Council* [1986] QB 1034, [1986] 1 All ER 787, CA; *Curran v Northern Ireland Co-ownership Housing Association Ltd* [1987] AC 718, [1987] 2 All ER 13, HL; *Hill v Chief Constable of West Yorkshire* [1988] QB 60, [1987] 1 All ER 1173, CA (affd [1989] AC 53, [1988] 2 All ER 238, HL); *Strable v Dartford Borough Council* [1984] JPL 329, CA; *Westlake v Bracknell District Council* (1987) 282 Estates Gazette 868; *Harris v Wyre Forest District Council* [1988] QB 835, [1988] 1 All ER 691, CA; *Rowling v Takaro Properties Ltd* [1988] AC 473, [1988] 1 All ER 163, PC; *Davy v Spelthorne Borough Council* [1984] AC 262, [1983] 3 All ER 278, HL; *S v Walsall Metropolitan Borough Council* [1985] 3 All ER 294, [1985] 1 WLR 1150, CA; *Ketteman v Hansel Properties Ltd* [1985] 1 All ER 352, [1984] 1 WLR 1274, CA (on appeal [1987] AC 189, [1988] 1 All ER 38, HL); *Smith v Bradford Metropolitan Borough Council* (1982) 80 LGR 713, CA; *Stephens v Anglian Water Authority* [1987] 3 All ER 379, [1987] 1 WLR 1381, CA; *Sullivan v South Glamorgan County Council* (1985) 84 LGR 415, CA; *Black v Kent County Council* (1983) 82 LGR 39, CA; *Kirkham v Chief Constable of the Greater Manchester Police* [1990] 2 QB 283, [1990] 3 All ER 246, HL; *Murphy v Brentwood District Council* [1991] 1 AC 398, [1990] 2 All ER 269, CA; *Lonrho plc v Tebbit* [1992] 4 All ER 280, CA; *Ancell v McDermott* [1993] 4 All ER 355, CA; *Burton v Islington Health Authority* [1993] QB 204, [1992] 3 All ER 833, CA; *West Wiltshire District Council v Garland* [1993] Ch 409, [1993] 4 All ER 246; *T (A Minor) v Surrey County Council* [1994] 4 All ER 577; *Barrett v Ministry of Defence* [1995] 3 All ER 87, [1995] 1 WLR 1217, CA; *Walker v Northumberland County Council* [1995] ICR 702; *Elguzouli-Daf v Metropolitan Police Comr* [1995] QB 335, [1995] 1 All ER 833, CA; *Bennett v Metropolitan Police Comr* [1995] 2 All ER 1, [1995] 1 WLR 488; *Mulcahy v Ministry of Defence* [1996] QB 732, [1996] 2 All ER 758, CA; *Capital & Counties plc v Hampshire County Council* [1997] QB 1004, [1997] 2 All ER 865, CA; *OLL Ltd v Secretary of State for Transport* [1997] 3 All ER 897; *Welton v North Cornwall District Council* [1997] 1 WLR 570, CA; *Lambert v West Devon Borough Council* (1997) 96 LGR 45; *Reeman v Department of Transport* [1997] 2 Lloyd's Rep 648, CA; *Clunis v Camden and Islington Health Authority* [1998] QB 978, [1998] 3 All ER 180, CA; *Costello v Chief Constable of Northumbria* [1999] ICR 752, CA; *Hussain v Lancaster City Council* [2000] QB 1,

[1999] 4 All ER 125, CA; *Phelps v Hillingdon London Borough Council* [2000] 4 All ER 504, [2000] 3 WLR 776, HL; *W v Essex County Council* [2000] 2 All ER 237, [2000] 2 WLR 601, HL; *Jenney (A Minor) v North Lincolnshire County Council* [2000] LGR 269, CA; *Waters v Metropolitan Police Comr* [2000] 4 All ER 934, [2000] 1 WLR 1607, HL; *Jebson v Ministry of Defence* [2000] 1 WLR 2055, CA; *Haydon v Kent County Council* [1978] QB 343, [1978] 2 All ER 97, CA; *Tarrant v Rowlands* [1979] RTR 144; *Bird v Pearce* [1979] RTR 369, CA; *Bartlett v Department of Transport* (1984) 83 LGR 579; *Sutherland Shire Council v Heyman* (1985) 59 ALJR 564, Aust HC; *Minister for Administering Environmental Planning v San Sebastian Pty* [1983] 2 NSWLR 268; *Bruce v Housing Corp of New Zealand* [1982] 2 NZLR 28; *Port Underwood Forests v Marlborough County Council* [1982] 1 NZLR 343; *Craig v East Coast Bays County Council* [1986] 1 NZLR 99. For cases on negligent misstatement see eg *Lambert v West Devon County Council* (1997) 96 LGR 45; *Culford Metal Industries Ltd v Export Credit Guarantees Department* [1981] Com LR 127; *Meates v A-G* [1983] NZLR 308, NZCA; *Shaddock & Associates Pty Ltd v Parramatta City Council* (1981) 36 ALR 385; *Holgate-Mohammed v Duke* [1984] AC 437, [1984] 1 All ER 1054, HL.

A right of action in negligence at common law may exist in relation to statutory duties, not just statutory powers: *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633, [1995] 3 All ER 353, HL. See further para 191 post.

For the appropriate procedure for an action in negligence, nuisance, etc against a public authority see *O'Reilly v Mackman* [1983] 2 AC 237, [1982] 3 All ER 1124, HL; *Cocks v Thanet District Council* [1983] 2 AC 286, [1982] 3 All ER 1135, HL; *Davy v Spelthorne Borough Council* supra; *Avon County Council v Buscott* [1988] QB 656, [1988] 1 All ER 841, CA; *Roy v Kensington and Chelsea and Westminster Family Practitioner Committee* [1992] 1 AC 624, [1992] 1 All ER 705, HL; *Mercury Communications Ltd v Director General of Telecommunications* [1996] 1 All ER 575, [1996] 1 WLR 48, HL; *British Steel plc v Customs and Excise Comrs* [1997] 2 All ER 366, CA; *Steed v Secretary of State for the Home Department* [2000] 3 All ER 226, [2000] 1 WLR 1169, HL; and para 71 ante.

2 As to acts which are reasonably necessary for works see *R v Pease* (1832) 4 B & Ad 30 (as explained in *R v Bradford Navigation Co* (1865) 6 B & S 631); *Pilgrim v Southampton and Dorchester Rly Co* (1849) 7 C & B 205 at 228; *Harrison v Southwark and Vauxhall Water Co* [1891] 2 Ch 409; *Saunby v London (Ontario) Water Comrs* [1906] AC 110 at 114-115, PC; *Manser v Northern and Eastern Counties Rly Co* (1841) 2 Ry & Can Cas 380; *Ricket v Directors, etc of Metropolitan Rly Co* (1867) LR 2 HL 175; *Lingke v Christchurch Corp* [1912] 3 KB 595, CA; *Goldberg & Son Ltd v Liverpool Corp* (1900) 82 LT 362, CA; *Harper v GN Haden & Sons Ltd* [1933] Ch 298, CA; *A-G and Hare v Metropolitan Rly Co* [1894] 1 QB 384, CA; *Price's Patent Candle Co Ltd v LCC* [1908] 2 Ch 526, CA (affd sub nom *LCC v Price's Candle Co Ltd* (1911) 75 JP 329, HL); *A-G v Manchester Corp* [1906] 1 Ch 643 at 656; cf *Whalley v Lancashire and Yorkshire Rly Co* (1884) 13 QBD 131, CA; *Collins v Middle Level Comrs* (1869) LR 4 CP 279; *Jones v Festiniog Rly Co* (1868) LR 3 QB 733; *Metropolitan Asylum District Managers v Hill* (1881) 6 App Cas 193, HL; *A-G v Mersey Rly Co* [1907] AC 415, HL. The building of a temporary bridge was held justified in *Priestly v Manchester and Leeds Rly Co* (1840) 4 Y & C Ex 63; see also *A-G v Eastern Counties and Northern and Eastern Rly Co's* (1842) 2 Ry & Can Cas 823.

As to acts which are a natural incident or effect of operations legalised by statute see *Hammersmith and City Rly Co v Brand* (1869) LR 4 HL 171; *Wilson v Delta Corp* [1913] AC 181 at 187, PC; *Quebec Rly, Light, Heat and Power Co Ltd v Vandry* [1920] AC 662, PC; *Dell v Chesham UDC* [1921] 3 KB 427; *Evans v Manchester, Sheffield and Lincolnshire Rly Co* (1887) 36 Ch D 626; *London, Brighton and South Coast Rly Co v Truman* (1885) 11 App Cas 45, HL; *Cracknell v Thetford Corp* (1869) LR 4 CP 629; cf *Lambert v Lowestoft Corp* [1901] 1 KB 590; *Geddis v Bann Reservoir Proprietors* (1878) 3 App Cas 430, HL; *Canadian Pacific Rly Co v Roy* [1902] AC 220, PC; and see *Piggott v Eastern Counties Rly Co* (1846) 3 CB 229. As to the limitations on liability of public bodies imposed by public policy see note 6 infra.

3 *Anns v Merton London Borough Council* [1978] AC 728 at 758, [1977] 2 All ER 492 at 503, HL, per Lord Wilberforce; *Fellowes v Rother District Council* [1983] 1 All ER 513 at 520 per Robert Goff J; *Rigby v Chief Constable of Northamptonshire* [1985] 2 All ER 985 at 992, [1985] 1 WLR 1242 at 1250 per Taylor J. See also *Home Office v Dorset Yacht Co Ltd* [1970] AC 1004 at 1066-1069, [1970] 2 All ER 294 at 330-333, HL, per Lord Diplock; *Dormer v Newcastle-upon-Tyne Corp* [1940] 2 KB 204 at 217-218, [1940] 2 All ER 521 at 527, CA, per Goddard LJ; *Tutin v Northallerton RDC* [1947] WN 189, CA; *Meade v Haringey London Borough Council* [1979] 2 All ER 1016 at 1024-1025, [1979] 1 WLR 637 at 647, CA, per Lord Denning MR.

4 Whether the public body owes a duty of care to a particular person depends upon more than mere foreseeability of harm; it depends upon the whole concept of proximity, the necessary relationship between claimant and defendant described by Lord Atkin in *M'Alister (or Donoghue) v Stevenson* [1932] AC 562 at 580, HL (see NEGLIGENCE vol 33 (Reissue) para 602 et seq): *Yuen Kun Yeu v A-G of Hong Kong* [1988] AC 175 at 191-192, [1987] 2 All ER 705 at 710, PC; see also *Peabody Donation Fund (Governors) v Sir Lindsay Parkinson & Co Ltd* [1985] AC 210 at 239-240, [1984] 3 All ER 529 at 533-534, HL, per Lord Keith of Kinkel; *Hill v Chief Constable of West Yorkshire* [1989] AC 53, [1988] 2 All ER 238, HL; *Alexandrou v Oxford* [1993] 4 All ER 328, CA; *Capital & Counties plc v Hampshire County Council* [1997] QB 1004, [1997] 2 All ER 865, CA; *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633, [1995] 3 All ER 353, HL; *Phelps v Hillingdon London Borough Council* [2000] 4 All ER 504, [2000] 3 WLR 776, HL. See also NEGLIGENCE vol 33 (Reissue) para 604.

5 *Home Office v Dorset Yacht Co Ltd* [1970] AC 1004 at 1038, [1970] 2 All ER 294 at 307-308, HL, per Lord Morris of Borth-y-Gest; *Peabody Donation Fund (Governors) v Sir Lindsay Parkinson & Co Ltd* [1985] AC 210 at

241, [1984] 3 All ER 529 at 534, HL; *Investors in Industry Commercial Properties Ltd v South Bedfordshire District Council* [1986] QB 1034, [1986] 1 All ER 787, CA; *Curran v Northern Ireland Co-ownership Housing Association Ltd* [1987] AC 718 at 729, [1987] 2 All ER 13 at 20, HL; *Hill v Chief Constable of West Yorkshire* [1988] QB 60 at 68, 69-70, 73, 75, [1987] 1 All ER 1173 at 1177, 1179, 1181, 1183, CA (contrary to public policy to give individual victim of crime a right of action against the police) (affd [1989] AC 53, [1988] 2 All ER 238, HL); *Yuen Kun Yeu v A-G of Hong Kong* [1988] AC 175 at 197, [1987] 2 All ER 705 at 715, PC; *Jones v Department of Employment* [1989] QB 1 at 22, 24-25, [1988] 1 All ER 725 at 736, 738, CA (following *Peabody Donation Fund (Governors) v Sir Lindsay Parkinson & Co Ltd* supra); *Calveley v Chief Constable of the Merseyside Police* [1989] 1 All ER 1025 at 1030, [1989] 2 WLR 624 at 630, HL, per Lord Bridge of Harwich (contrary to public policy to allow a right of action in damages to a person who has been wrongly suspected of an offence). See also *Rowling v Takaro Properties Ltd* [1988] AC 473 at 501-503, [1988] 1 All ER 163 at 171-174, PC. The public policy limitation is not unique to rights of action against public bodies: *White v Jones* [1995] 2 AC 207, [1995] 1 All ER 691, HL. If a government department or officer, charged with the making of decisions whether certain payments should be made, is subject to a statutory right of appeal against his decisions, he owes a duty of care in public law: *Jones v Department of Employment* [1989] QB 1 at 22, [1988] 1 All ER 725 at 736, CA, per Glidewell LJ and at 25 and 738 per Slade LJ; *Mills v Winchester Diocesan Board of Finance* [1989] Ch 428, [1989] 2 All ER 317; *Kirkham v Chief Constable of the Greater Manchester Police* [1990] 2 QB 283, [1990] 3 All ER 246, CA (police); *Murphy v Brentwood District Council* [1991] 1 AC 398, [1990] 2 All ER 269, HL (building control); *Lonrho plc v Tebbit* [1992] 4 All ER 280, CA (minister and government department); *Burton v Islington Health Authority* [1993] QB 204, [1992] 3 All ER 833, CA (health authorities' duties to the unborn child); *West Wiltshire District Council v Garland* [1993] Ch 409, [1993] 4 All ER 246 (auditors); *T (A Minor) v Surrey County Council* [1994] 4 All ER 577; *Elguzouli-Daf v Metropolitan Police Comr* [1995] QB 335, [1995] 1 All ER 833, CA (Crown Prosecution Service); cf *Welsh v Chief Constable of the Merseyside Police* [1993] 1 All ER 692; *Bennett v Metropolitan Police Comr* [1995] 2 All ER 1, [1995] 1 WLR 488 (police officer); *X (Minors) v Bedfordshire County Council* [1995] 2 AC 633, [1995] 3 All ER 353, HL (social workers; psychiatrists); *Stovin v Wise* [1996] AC 923, [1996] 3 All ER 801, HL (highway authority); *Capital & Counties plc v Hampshire County Council* [1997] QB 1004, [1997] 2 All ER 865, CA (firefighters); *OLL Ltd v Secretary of State for Transport* [1997] 3 All ER 897 (coastguards); *Welton v North Cornwall District Council* [1997] 1 WLR 570, CA; *Lambert v West Devon Borough Council* (1997) 96 LGR 45 (building control officer); *Reeman v Department of Transport* [1997] 2 Lloyd's Rep 648, CA (duties of the Department of Transport to owner of fishing vessel); *Clunis v Camden and Islington Health Authority* [1998] QB 978, [1998] 3 All ER 180, CA (health authority's duties to former mental health patient); *Hussain v Lancaster County Council* [2000] QB 1, [1999] 4 All ER 125, CA (powers under housing and highways legislation); *Phelps v Hillingdon London Borough Council* [2000] 4 All ER 504, [2000] 3 WLR 776, HL (educational psychologists); *W v Essex County Council* [2000] 2 All ER 237, [2000] 2 WLR 601, HL (local authority's duty to sexually abused foster child); *Jenney (A Minor) v North Lincolnshire County Council* [2000] LGR 269, CA (duties of local education authority); *Waters v Metropolitan Police Comr* [2000] 4 All ER 934, [2000] 1 WLR 1607, HL; and see NEGLIGENCE vol 33 (Reissue) para 618.

6 *Peabody Donation Fund (Governors) v Sir Lindsay Parkinson & Co Ltd* [1985] AC 210 at 242, [1984] 3 All ER 529 at 535, HL (overruling *Acrecrest Ltd v WS Hattrell & Partners* [1983] QB 260, [1983] 1 All ER 17, CA), per Lord Keith of Kinkel; *Curran v Northern Ireland Co-ownership Housing Association Ltd* [1987] AC 718 at 727-728, [1987] 2 All ER 13 at 19, HL, per Lord Bridge of Harwich; *Hill v Chief Constable of West Yorkshire* [1988] QB 60 at 72, [1987] 1 All ER 1173 at 1180, CA, per Fox LJ (affd [1989] AC 53, [1988] 2 All ER 238, HL); see also *Anns v Merton London Borough Council* [1978] AC 728 at 758, [1977] 2 All ER 492 at 504, HL, per Lord Wilberforce; *Dennis v Charnwood Borough Council* [1983] QB 409, [1982] 3 All ER 486, CA; *Fellowes v Rother District Council* [1983] 1 All ER 513; *Investors in Industry Commercial Properties Ltd v South Bedfordshire District Council* [1986] QB 1034, [1986] 1 All ER 787, CA. It appears that, for example, 'all women', or 'all householders' is too large a section of society to amount to a class for these purposes: *Hill v Chief Constable of West Yorkshire* supra at 62 and 243 per Lord Keith of Kinkel.

7 *Home Office v Dorset Yacht Co Ltd* [1970] AC 1004 at 1032, 1041, 1056, 1057, [1970] 2 All ER 294 at 302, 309, 322, 323, HL (prison officers under duty to prevent escape of borstal trainees likely to cause damage to neighbours and their property); *Greenwell v Prison Comrs* (1951) 101 L Jo 486; *Ellis v Home Office* [1953] 2 QB 135, [1953] 2 All ER 149, CA; *Dutton v Bognor Regis UDC* [1972] 1 QB 373 at 397-398, 406-407, [1972] 1 All ER 462 at 475, 483, CA, per Lord Denning MR (local authority under duty to protect home purchasers from jerry building). The existence of a duty in respect of negligent advice or information will depend on general principles: *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465, [1963] 2 All ER 575, HL; cf *Mutual Life and Citizens' Assurance Co Ltd v Evatt* [1971] AC 793, [1971] 1 All ER 150, PC. This duty rests on a public officer issuing an official certificate (*Ministry of Housing and Local Government v Sharp* [1970] 2 QB 223 at 252, [1970] 1 All ER 1009, CA; *Coats Patons (Retail) Ltd v Birmingham Corpn* (1971) 69 LGR 356), and a public inspector who gives advice on the safety of buildings, machines or material (*Dutton v Bognor Regis UDC* supra), and is owed to all those who he knew, or ought to have known, might suffer injury if the information was false or the advice unsound. See also *Dawson & Co v Bingley UDC* [1911] 2 KB 149, CA (misleading fire plug plate retarding efforts of fire brigade); *Wellbridge Holdings Ltd v Metropolitan Corpn of Greater Winnipeg* (1971) 22 DLR (3d) 470, Can SC (no liability in damages to person placing reliance on decision made without observance of rules of natural justice); see further NEGLIGENCE vol 33 (Reissue) para 619; TORT vol 45(2) (Reissue) para 845. As to vicarious responsibility in respect of the negligence of public officers see notes 1-6 supra.

8 *East Suffolk Rivers Catchment Board v Kent* [1941] AC 74, [1940] 4 All ER 527, HL. A public body's immunity from liability for failure to exercise its power, though great, is not absolute; the public body may be under a duty to give proper consideration to the question whether it should exercise the power or not: *Anns v Merton London Borough Council* [1978] AC 728 at 755, [1977] 2 All ER 492 at 501, HL, per Lord Wilberforce; but see *Sutherland Shire Council v Heyman* (1985) 59 AJLR 564, Aust HC; and see para 190 post.

9 *Home Office v Dorset Yacht Co Ltd* [1970] AC 1004 at 1035-1038, [1970] 2 All ER 294 at 304-307, HL, per Lord Morris of Borth-y-Gest and at 1053-1055 and 319-321 per Lord Pearson; *Dutton v Bognor Regis UDC* [1972] 1 QB 373 at 392, [1972] 1 All ER 462 at 470, CA, per Lord Denning MR and at 402-403 and 479-480 per Sachs LJ; *Anns v Merton London Borough Council* [1978] AC 728, [1977] 2 All ER 492, HL. See NEGLIGENCE vol 33 (Reissue) para 619. See also *R v Williams* (1884) 9 App Cas 418, PC (duty arising from control and management of tidal harbour); *Bede Steam Ship Co v River Wear Comrs* [1907] 1 KB 310, CA (damages for detention of ship due to negligent accumulation of silt at harbour entrance); *Boxes v British Waterways Board* [1971] 2 Lloyd's Rep 183, CA (control of canal). See further para 190 post.

10 *Mersey Docks and Harbour Board Trustees v Gibbs* (1866) LR 1 HL 93 at 107, 110 per Blackburn J. For examples see the cases cited in note 1 supra; and see also *Ruck v Williams* (1858) 3 H & N 308 (flooding caused by sewer); *Hipkins v Birmingham and Staffordshire Gas Light Co* (1860) 6 H & N 250 (fouling of stream by refuse); *Whitehouse v Fellowes* (1861) 10 CBNS 765 (negligent construction of catchpits); *Cowley v Sunderland Corp'n* (1861) 6 H & N 565 (defective washing machine); *Thompson v North Eastern Rly Co* (1860) 2 B & S 106 (obstruction in canal); *Clothier v Webster* (1862) 12 CBNS 790 (negligent construction of sewer); *Mersey Docks and Harbour Board Trustees v Gibbs* supra (obstruction in dock: in this case previous cases were reviewed); *Brine v Great Western Rly Co* (1862) 2 B & S 402; *Coe v Wise* (1866) LR 1 QB 711 (failure to maintain sluice); *Biscoe v Great Eastern Rly Co* (1873) LR 16 Eq 636 (insufficient support to house adjoining railway works); *Winch v Thames Conservators* (1874) LR 9 CP 378 (defective towing path); *Gilbert v Trinity House Corp'n* (1886) 17 QBD 795, DC (submerged obstruction); *The Bearn* [1906] P 48, CA (rubbish in berth); *Liebigs Extract of Meat Co v Mersey Docks and Harbour Board and Walter Nelson & Co* [1918] 2 KB 381, CA (barilla ore on quay damaging hides); *Carpenter v Finsbury Borough Council* [1920] 2 KB 195 (street insufficiently lighted); *Blundy, Clark & Co Ltd v London and North Eastern Rly Co* [1931] 2 KB 334, CA (collapse of lock); *Guilfoyle v Port of London Authority* [1932] 1 KB 336 (bridge out of repair). Cf *Queens of the River Steam Ship Co Ltd v Easton Gibb & Co and River Thames Conservators* (1907) 96 LT 901, CA (submerged obstruction; no negligence); *McClelland v Manchester Corp'n* [1912] 1 KB 118 at 130; *Law v Railway Executive and Chigwell UDC* [1949] WN 172 (unlighted level crossing gates); and NEGLIGENCE vol 33 (Reissue) para 619.

11 *R v East and West India Dock Co* (1888) 60 LT 232, DC (future traffic developments). Consideration must, however, be given to the accommodation and convenience of those whose rights are sought to be altered: see *Abraham v Great Northern Rly Co* (1851) 16 QB 586; *Fenwick v East London Rly Co* (1875) LR 20 Eq 544; *R v Wycombe Rly Co* (1867) LR 2 QB 310; *Pugh v Golden Valley Rly Co* (1879) 12 ChD 274; affd 15 ChD 330, CA (distinguishing *A-G v Ely, Haddenham and Sutton Rly Co* (1869) 4 Ch App 194); *T Tilling Ltd v Dick Kerr & Co Ltd* [1905] 1 KB 562; *Clippens Oil Co Ltd v Edinburgh and District Water Trustees* [1904] AC 64, HL; *Haley v London Electricity Board* [1965] AC 778, [1964] 3 All ER 185, HL.

12 *Manchester Corp'n v Farnworth* [1930] AC 171, HL (fumes from chimneys of an electrical generating station; a case of nuisance); *Parnaby v Lancaster Canal Co* (1839) 11 Ad & El 223 (obstruction in canal); *Manser v Northern and Eastern Counties Rly Co* (1841) 2 Ry & Can Cas 380; *Lawrence v Great Northern Rly Co* (1851) 16 QB 643 (flooding caused by railway embankment); *Manley v St Helens Canal and Rly Co* (1858) 2 H & N 840.

13 See *Fletcher v Rylands and Horrocks* (1866) LR 1 Ex Ch 265 (affd sub nom *Rylands v Fletcher* (1868) LR 3 HL 330); *Cambridge Water Co v Eastern Counties Leather plc* [1994] 2 AC 264, [1994] 1 All ER 53, HL; and NUISANCE vol 34 (Reissue) para 40. Liability for nuclear incidents is covered by the Nuclear Installations Act 1965, which consolidates the law relating to nuclear installations: see FUEL AND ENERGY vol 19(3) (2007 Reissue) para 1487 et seq. Civil and criminal liability for damage caused by the deposit of poisonous, noxious or polluting waste on land is imposed by the Control of Pollution Act 1974 s 88 (as amended) (the Act does not expressly bind the Crown); Environmental Protection Act 1990 s 33 (as amended), s 73(6): see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARAS 655, 660.

14 *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149 at 172-177, [1953] 1 All ER 179 at 192-196, CA, per Lord Evershed MR; left open by Upjohn J in *Smeaton v Ilford Corp'n* [1954] Ch 450 at 478, [1954] 1 All ER 923 at 936 (local authority; escape of sewage). In the case of gas boards acting under statutory powers negligence must be proved, unless the statute preserves their liability: *Price v South Metropolitan Gas Co* (1895) 65 LQB 126, DC; *Dunne v North Western Gas Board* [1964] 2 QB 806, [1963] 3 All ER 916, CA; see FUEL AND ENERGY vol 19(2) (2007 Reissue) paras 944, 1301. Similarly, when electricity is supplied under statutory authority, negligence on the part of the electricity authority must be shown: *National Telephone Co v Baker* [1893] 2 Ch 186; see FUEL AND ENERGY vol 19(2) (2007 Reissue) para 1301. Water and canal companies are also not liable in the absence of negligence: *Snook v Grand Junction Waterworks Co* (1886) 2 TLR 308; see also *Dixon v Metropolitan Board of Works* (1881) 7 QBD 418; and now the Reservoirs Act 1975 s 28(2), Sch 2; and WATER AND WATERWAYS vol 100 (2009) PARA 301; WATER AND WATERWAYS vol 101 (2009) PARA 671. See also *West v Bristol Tramways Co* [1908] 2 KB 14, CA (liability for fumes given off by creosote).

15 *Pride of Derby and Derbyshire Angling Association Ltd v British Celanese Ltd* [1953] Ch 149 at 189-190, [1953] 1 All ER 179 at 202-203, CA, per Denning LJ; *Boxes v British Waterways Board* [1970] 2 Lloyd's Rep 434; affd [1971] 2 Lloyd's Rep 183, CA (rule inapplicable to body under duty to provide canal service).

UPDATE

179-196 Liability

Civil sanctioning powers may be conferred on certain regulators in relation to specific offences: see Regulatory Enforcement and Sanctions Act 2008 Pt 3 (ss 36-71); and PARA 196A.

185-190 Personal liability of officers ... Failure to exercise powers

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(1) LIABILITY/(ii) Tort/C. ACTION FOR BREACH OF COMMON LAW DUTIES/190. Failure to exercise powers.

190. Failure to exercise powers.

Persons upon whom discretionary powers are conferred by statute for specific purposes are under no obligation to exercise them and no liability ordinarily attaches for not doing so¹. If they do exercise such powers they must do so strictly in accordance with the terms of the statute²; but it does not follow that, because a statute confers powers the exercise of which might prevent injury to persons who would otherwise be injuriously affected, the donees of such powers are liable in damages for failure to exercise them³. If, in the exercise of its discretion, an authority decides to execute a power, but executes it imperfectly, it may not be liable for damage which would have occurred even if it had not executed it⁴. Where a statute imposes a duty to exercise the power, or entrusts control over an activity in such a way as to carry with it an implied duty⁵, any person or any member of a class of persons for whose benefit the duty is imposed may maintain an action for injury arising out of failure to fulfil the duty⁶. If there is no absolute duty⁷, but merely a duty to exercise reasonable care and diligence, negligence or misfeasance must be proved⁸.

The rule of common law that no action was maintainable against a highway authority for non-repair of highways has been abrogated by statute⁹.

1 A public body's immunity from liability for failure to exercise its power, though great, is not absolute; the public body may be under a duty to give proper consideration to the question whether it should exercise the power or not: *Anns v Merton London Borough Council* [1978] AC 728 at 755, [1977] 2 All ER 492 at 501, HL (overruled on other grounds by *Murphy v Brentwood District Council* [1991] 1 AC 398, [1990] 2 All ER 908, HL). Liability will attach only where (1) it would have been irrational not to have exercised the power, so that there was in effect a public law duty to act; and (2) there were exceptional grounds for holding that the policy of the statute required compensation to be paid to persons who suffered loss because the power was not exercised: *Stovin v Wise* [1996] AC 923, [1996] 3 All ER 801, HL.

See also *Hussain v Lancaster City Council* [2000] QB 1, (1998) 96 LGR 663, CA; *Vicar of Writtle v Essex County Council* (1979) 77 LGR 656; *Fellowes v Rother District Council* [1983] 1 All ER 513 at 522 per Robert Goff J; cf

Sutherland Shire Council v Heyman (1985) 59 ALJR 564, Aust HC. See also *York and North Midland Rly Co v R* (1853) 1 E & B 858; *Edinburgh, Perth and Dundee Rly Co v Phillip* (1857) 2 Macq 514 at 526, HL; *Wilson v Halifax Corp* (1868) LR 3 Exch 114; *Ex p A Clergyman* (1873) LR 15 Eq 154; *Forbes v Lee Conservancy Board* (1879) 4 Ex D 116; *R v French* (1879) 4 QBD 507, CA; *A-G v Simpson* [1901] 2 Ch 671 at 712, CA; *Sheppard v Glossop Corp* [1921] 3 KB 132, CA; and see *Gibraltar Sanitary Comrs v Orfila* (1890) 15 App Cas 400, PC; *Smith v Cawdle Fen, Ely (Cambridge) Comrs* [1938] 4 All ER 64. See also para 189 ante. For the circumstances in which courts may interfere with the exercise of a discretion see paras 82-86 ante.

2 See paras 82-86 ante.

3 *Colley v London and North Western Rly Co* (1880) 5 Ex D 277; *Stretton's Derby Brewery Co v Derby Corp* [1894] 1 Ch 431 (followed in *Lambert v Lowestoft Corp* [1901] 1 KB 590); *Southwark and Vauxhall Water Co v Wandsworth Board of Works* [1898] 2 Ch 603 at 611-612, CA (where Collins LJ distinguished *Geddis v Bann Reservoir Proprietors* (1878) 3 App Cas 430 at 449, per Lord Hatherley); *East Suffolk Rivers Catchment Board v Kent* [1941] AC 74, [1940] 4 All ER 527, HL.

4 *East Suffolk Rivers Catchment Board v Kent* [1941] AC 74, [1940] 4 All ER 527, HL. But see *Anns v Merton London Borough Council* [1978] AC 728, [1977] 2 All ER 492, HL; and *Fellowes v Rother District Council* [1983] 1 All ER 513 at 522 per Robert Goff J. See also para 189 ante.

5 *Dutton v Bognor Regis UDC* [1972] 1 QB 373 at 397, [1972] 1 All ER 462 at 470, CA, per Lord Denning MR and at 402-403 and 479-480 per Sachs LJ; *Anns v Merton London Borough Council* [1978] AC 728, [1977] 2 All ER 492, HL. See also para 189 ante generally.

6 *Booth v Monmouthshire Rly and Canal Co* (1851) 17 LTOS 154; *Ohrby v Ryde Comrs* (1864) 5 B & S 743; *Mersey Docks and Harbour Board Trustees v Gibbs* (1866) LR 1 HL 93; *Holborn Union v St Leonard, Shoreditch, Vestry* (1876) 2 QBD 145, DC; *Solomons v R Gertzenstein Ltd* [1954] 2 QB 243, [1954] 2 All ER 625, CA; *R v Carrick District Council, ex p Shelley* (1996) 95 LGR 620; but see *Cattle v Stockton Waterworks Co* (1875) LR 10 QB 453; *Saunders v Holborn District Board of Works* [1895] 1 QB 64, DC; *Fleming v Manchester Corp* (1881) 44 LT 517; *Corry v Great Western Rly Co* (1881) 7 QBD 322, CA; *Dormont v Furness Rly Co* (1883) 11 QBD 496; *Bramlett v Tees Conservancy Comrs* (1889) 49 JP 214, DC; *Robinson v Beaconsfield RDC* [1911] 2 Ch 188, CA; *Hanley v Edinburgh Corp* [1913] AC 488, HL; *R v Marshland Smeeth and Fen District Comrs* [1920] 1 KB 155; *Boynton v Auckolme Drainage and Navigation Comrs* [1921] 2 KB 213, CA. See also TORT vol 45(2) (Reissue) para 846.

7 Whether the duty is absolute or not depends on the construction of the statute: see *Hammond v St Pancras Vestry* (1874) LR 9 CP 316 at 322.

8 *Glossop v Heston and Isleworth Local Board* (1878) 12 ChD 102, CA; *A-G v Dorking Union Guardians* (1882) 20 ChD 595, CA; *Bateman v Poplar District Board of Works (No 2)* (1887) 37 ChD 272; *Fleming v Manchester Corp* (1881) 44 LT 517; *Gibraltar Sanitary Comrs v Orfila* (1890) 15 App Cas 400, PC; *A-G v Clerkenwell Vestry* [1891] 3 Ch 527 (following *Glossop v Heston and Isleworth Local Board* supra); *Ogilvie v Blything Union Rural Sanitary Authority* (1892) 67 LT 18, CA; *Stretton's Derby Brewery Co v Derby Corp* [1894] 1 Ch 431; *Robinson v Workington Corp* [1897] 1 QB 619, CA; *Evans v Liverpool Corp* [1906] 1 KB 160; *Queens of the River Steam Ship Co Ltd v Easton, Gibb & Co and River Thames Conservators* (1907) 96 LT 901, CA; see also *Wilson v Halifax Corp* (1868) LR 3 Exch 114; *Ohrby v Ryde Comrs* (1864) 5 B & S 743; *Blyth v Birmingham Waterworks Co* (1856) 11 Exch 781; *Whitehouse v Birmingham Canal Co* (1857) 27 LJ Ex 25; *Snook v Grand Junction Waterworks Co Ltd* (1886) 2 TLR 308; *Green v Chelsea Waterworks Co Ltd* (1894) 70 LT 547, CA; *Lambert v Lowestoft Corp* [1901] 1 KB 590; *Lingké v Christchurch Corp* [1912] 3 KB 595, CA; *Morris v Mynddislwyn Urban Council* [1917] 2 KB 309, CA; *Craib v Woolwich Borough Council* (1920) 36 TLR 630; *Longhurst v Metropolitan Water Board* [1948] 2 All ER 834, HL.

9 See the Highways (Miscellaneous Provisions) Act 1961 s 1 (repealed: see now the Highways Act 1980 ss 41, 58 (s 58 as amended)). A highway authority is liable for the exercise or non-exercise of its statutory duty, subject to a statutory defence that it took all reasonable care in the circumstances: see the Highways Act 1980 s 58 (as amended); *Haydon v Kent County Council* [1978] QB 343, [1978] 2 All ER 97, CA; *Tarrant v Rowlands* [1979] RTR 144; *Bird v Pearce* [1979] RTR 369, CA; *Bartlett v Department of Transport* (1984) 83 LGR 579; and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) para 302.

UPDATE

179-196 Liability

Civil sanctioning powers may be conferred on certain regulators in relation to specific offences: see Regulatory Enforcement and Sanctions Act 2008 Pt 3 (ss 36-71); and PARA 196A.

185-190 Personal liability of officers ... Failure to exercise powers

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(1) LIABILITY/(ii) Tort/C. ACTION FOR BREACH OF COMMON LAW DUTIES/191. Statutory authorisation.

191. Statutory authorisation.

Where the legislature directs that a thing shall be done in any event¹ or authorises² certain works at a particular place for a specific purpose³ or grants powers with the intention that they are to be exercised⁴, although leaving some discretion as to the mode of exercise⁵, no action will lie at common law⁶ for nuisance or damage which is the inevitable result of carrying out the statutory powers so conferred⁷. This is so whether the act causing the damage is authorised for public purposes or private profit⁸. The body exercising statutory powers enjoys immunity only if it exercises its powers without negligence⁹. In the absence of negligence¹⁰ it seems that a body exercising statutory powers will not be liable to an action merely because it might, by acting in a different way, have minimised an injury¹¹.

1 Where a statutory duty is imposed: *Department of Transport v North West Water Authority* [1984] AC 336 at 359, [1983] 3 All ER 273 at 276, HL, per Lord Fraser of Tullybelton; *Hammond v St Pancras Vestry* (1874) LR 9 CP 316. See also *Stretton's Derby Brewery Co v Derby Corpn* [1894] 1 Ch 431; *Smeaton v Ilford Corpn* [1954] Ch 450, [1954] 1 All ER 923.

2 The authorisation may be express or by necessary implication: *Allen v Gulf Oil Refining Ltd* [1981] AC 1001 at 1011, [1981] 1 All ER 353 at 356, HL, per Lord Wilberforce; *Tate & Lyle Industries Ltd v GLC* [1983] 2 AC 509, [1983] 1 All ER 1159, HL, especially at 538 and 1171 per Lord Templeman.

3 *British Cast Plate Manufacturers v Meredith* (1792) 4 Term Rep 794; *Hammersmith and City Rly Co v Brand* (1869) LR 4 HL 171; *Metropolitan Asylum District Managers v Hill* (1881) 6 App Cas 193 at 201, 203, 211, HL; *Canadian Pacific Rly Co v Roy* [1902] AC 220, PC. Immunity from action is withheld where the terms of the statute are permissive only: *Metropolitan Asylum District Managers v Hill* supra; *Allen v Gulf Oil Refining Ltd* [1981] AC 1001 at 1011, [1981] 1 All ER 353 at 356, HL, per Lord Wilberforce. Compensation for depreciation in land value caused by nuisance attributable to certain public works is available under the Land Compensation Act 1973 s 1 (as amended): see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 884.

4 A corporation cannot divest itself of powers or duties entrusted to it for public purposes: see *Re South Eastern Rly Co and Wiffin's Contract* [1907] 2 Ch 366; and CORPORATIONS vol 9(2) (2006 Reissue) para 1234.

5 *London, Brighton and South Coast Rly Co v Truman* (1885) 11 App Cas 45, HL. The fact that the statute relied upon limits the operation of the statutory powers to a particular site does not, however, of itself determine the question as to the character of the works authorised: see *Jordeson v Sutton, Southcoates and Drypool Gas Co* [1898] 2 Ch 614; affd [1899] 2 Ch 217, CA.

6 As to compensation clauses see para 187 ante.

7 *Manchester Corpn v Farnworth* [1930] AC 171 at 183, HL, per Lord Dunedin; see *Allen v Gulf Oil Refining Ltd* [1981] AC 1001, [1981] 1 All ER 353, HL; *Tate & Lyle Industries Ltd v GLC* [1983] 2 AC 509, [1983] 1 All ER 1159, HL; see also *Boulton v Crowther* (1824) 2 B & C 703; *East Fremantle Corpn v Annois* [1902] AC 213, PC; *Marriage v East Norfolk Rivers Catchment Board* [1950] 1 KB 284, [1949] 2 All ER 1021, CA; *Gillingham Borough Council v Medway (Chatham) Dock Co Ltd* [1993] QB 343, [1992] 3 All ER 923; cf *Edinburgh Water Trustees v Sommerville & Son* (1906) 95 LT 217 at 220, HL, per Lord Davey; see also COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 859; HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) para 389; RAILWAYS, INLAND WATERWAYS AND

CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) para 299. As to the duty to give warning of an obstruction in a highway see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) para 398. As to the extinguishment of an easement as a result of the exercise of statutory powers see EASEMENTS AND PROFITS A PRENDRE vol 16(2) (Reissue) para 143. As to the exclusion of the rule in *Rylands v Fletcher* (1868) LR 3 HL 330, in the case of acts done under statutory powers see para 189 ante; and NUISANCE vol 34 (Reissue) para 46. As to the effect of a clause in a statute preserving remedies for nuisance see para 194 post.

8 *Mersey Docks and Harbour Board Trustees v Gibbs* (1866) LR 1 HL 93 at 112 per Blackburn J. The court will, however, construe more liberally powers exercised for public purposes than powers given for purposes of gain: see para 186 ante.

9 To obtain immunity a person or body must exercise statutory powers without negligence in the special sense that he or it must carry out work or conduct operations with all reasonable regard and care for the interests of other persons: *Geddis v Proprietors of Bann Reservoir* (1878) 3 App Cas 430 at 455 per Lord Blackburn; *Allen v Gulf Oil Refining Ltd* [1981] AC 1001, [1981] 1 All ER 353, HL; *Tate & Lyle Industries Ltd v GLC* [1983] 2 AC 509, [1983] 1 All ER 1159, HL; and see *British Waterways Board v Severn Trent Water Ltd* [2001] Ch 32, [2000] 1 All ER 347.

10 As to the liability for negligence of persons exercising statutory powers, and as to the possibility that it may be negligent to exercise statutory powers in a hurtful manner where a choice of means of exercise is available see para 189 ante.

11 *London, Brighton and South Coast Rly Co v Truman* (1885) 11 App Cas 45 at 52, HL, per Lord Halsbury LC; *Goldberg & Son Ltd v Liverpool Corpn* (1900) 82 LT 362, CA; see also *Wilson v Delta Corpn* [1913] AC 181 at 187-188, PC.

UPDATE

179-196 Liability

Civil sanctioning powers may be conferred on certain regulators in relation to specific offences: see Regulatory Enforcement and Sanctions Act 2008 Pt 3 (ss 36-71); and PARA 196A.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(1) LIABILITY/(ii) Tort/C. ACTION FOR BREACH OF COMMON LAW DUTIES/192. Instances of freedom from liability for acts authorised.

192. Instances of freedom from liability for acts authorised.

An action has been held not to lie against a body exercising its statutory powers without negligence¹ in respect of the flooding of land by water escaping from watercourses², from water pipes³, from drains⁴, or from a canal⁵; the escape of fumes from sewers⁶; the escape of sewage⁷; the subsidence of a road over a sewer⁸; vibration or noise caused by a railway⁹; noxious odours, vibrations and offensive noises emanating from an oil refinery¹⁰; fires caused by authorised acts¹¹; the pollution of a stream where statutory requirements to use the best known process of purifying before discharging the effluent have been satisfied¹²; interference with a telephone or telegraph system by an electric tramway¹³; interference with television reception by an overhead power line¹⁴; the insertion of poles for tramways in the subsoil¹⁵; annoyance caused by things reasonably necessary for the execution of authorised works¹⁶; accidental damage caused by the placing of a grating in a roadway¹⁷ or a sewer in the bed of a river¹⁸; the escape of tar acid¹⁹; or interference with the access of a frontager by a street shelter²⁰ or a pedestrian refuge²¹ or safety railings on the edges of a pavement²².

1 As to liability for negligence see para 189 ante.

- 2 *Sutton v Clarke* (1815) 6 Taunt 29.
- 3 *Blyth v Birmingham Waterworks Co* (1856) 11 Exch 781; *Snook v Grand Junction Waterworks Co* (1886) 2 TLR 308; *Green v Chelsea Waterworks Co* (1894) 70 LT 547, CA.
- 4 *Gordon v St James's, Westminster, Vestry* (1865) 13 LT 511.
- 5 *Whitehouse v Birmingham Canal Co* (1857) 27 LJ Ex 25; *Dunn v Birmingham Canal Co* (1872) LR 8 QB 42; *Lagan Navigation Co v Lambeg Bleaching, Dyeing and Finishing Co Ltd* [1927] AC 226, HL. See further WATER AND WATERWAYS vol 101 (2009) PARA 781.
- 6 *Boome v Bromley RDC* (1905) 69 JP Jo 533.
- 7 *Hammond v St Pancras Vestry* (1874) LR 9 CP 316; *Stretton's Derby Brewery Co v Derby Corp* [1894] 1 Ch 431; *Smeaton v Ilford Corp* [1954] Ch 450, [1954] 1 All ER 923; *Dunne v North Western Gas Board* [1964] 2 QB 806, [1963] 3 All ER 916, CA.
- 8 *Lambert v Lowestoft Corp* [1901] 1 KB 590.
- 9 *Hammersmith and City Rly Co v Brand* (1869) LR 4 HL 171; *City of Glasgow Union Rly Co v Hunter* (1870) LR 2 Sc & Div 78, HL; cf *Allison v South London Rly Co* (1892) Times, 24 February.
- 10 *Allen v Gulf Oil Refining Ltd* [1981] AC 1001, [1981] 1 All ER 353, HL.
- 11 *Fremantle v London and North Western Rly Co* (1860) 2 F & F 337 at 349; *Canadian Pacific Rly Co v Roy* [1902] AC 220, PC; cf *Longman v Grand Junction Canal Co* (1863) 3 F & F 736.
- 12 *Lea Conservancy Board v Hertford Corp* (1884) 48 JP 628. For a case of pollution in which it was held that there was no statutory protection see *A-G v Hackney Local Board* (1875) LR 20 Eq 626.
- 13 *National Telephone Co v Baker* [1893] 2 Ch 186; *Eastern and South African Telegraph Co v Cape Town Tramways Cos Ltd* [1902] AC 381, PC.
- 14 *Bridlington Relay Ltd v Yorkshire Electricity Board* [1965] Ch 436, [1965] 1 All ER 264.
- 15 *Escott v Newport Corp* [1904] 2 KB 369, DC.
- 16 *Harrison v Southwark and Vauxhall Water Co* [1891] 2 Ch 409; cf *Knight v Isle of Wight Electric Light and Power Co* (1904) 73 LJ Ch 299. For the principle that statutory authority includes authority to do acts reasonably necessary for the exercise of statutory powers see para 20 ante; and cf *Allen v Gulf Oil Refining Ltd* [1981] AC 1001, [1981] 1 All ER 353, HL.
- 17 *Papworth v Battersea Borough Council* [1916] 1 KB 583, CA.
- 18 *Radstock Co-operative and Industrial Society Ltd v Norton Radstock UDC* [1968] Ch 605, [1968] 2 All ER 59, CA.
- 19 *Dell v Chesham UDC* [1921] 3 KB 427.
- 20 *Edginton v Swindon Corp* [1939] 1 KB 86, [1938] 4 All ER 57.
- 21 *Ching Garage Ltd v Chingford Corp* [1961] 1 All ER 671, [1961] 1 WLR 470, HL.
- 22 *Dormer v Newcastle-upon-Tyne Corp* [1940] 2 KB 204, [1940] 2 All ER 521, CA.

UPDATE

179-196 Liability

Civil sanctioning powers may be conferred on certain regulators in relation to specific offences: see Regulatory Enforcement and Sanctions Act 2008 Pt 3 (ss 36-71); and PARA 196A.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(1) LIABILITY/(ii) Tort/C. ACTION FOR BREACH OF COMMON LAW DUTIES/193. Onus of proof.

193. Onus of proof.

Whether or not the legislature has authorised interference with private rights depends upon the construction of the statute under which the powers are exercised¹. The burden of proof that Parliament intended to authorise the act complained of rests upon those who claim the right to do it, and they are bound to show, with sufficient clarity, that the statute under which they act does take away ordinary private rights². Similarly, the onus of proving that nuisance or damage is inevitable lies on those who seek to escape liability³.

¹ *Metropolitan Asylum District Managers v Hill* (1881) 6 App Cas 193 at 203, 208, 211, HL; *Canadian Pacific Rly Co v Parke* [1899] AC 535 at 544, PC; *Edgington v Swindon Corpn* [1939] 1 KB 86 at 89, [1938] 4 All ER 57 at 61 per Finlay LJ; *Allen v Gulf Oil Refining Ltd* [1981] AC 1001 at 1011, [1981] 1 All ER 353 at 356, HL, per Lord Wilberforce. As to the effect of the absence of a compensation clause from the statute in question see para 187 ante.

² *Hammersmith and City Rly Co v Brand* (1869) LR 4 HL 171 at 189; *Clowes v Staffordshire Potteries Waterworks Co* (1872) 8 Ch App 125 at 139; *A-G v Gas Light and Coke Co* (1877) 7 ChD 217; *Metropolitan Asylum District Managers v Hill* (1881) 6 App Cas 193 at 208, 213, HL; and see *Truman v London, Brighton and South Coast Rly Co* (1885) 29 ChD 89 at 108, CA; *revsd sub nom London, Brighton and South Coast Rly Co v Truman* (1885) 11 App Cas 45, HL; *T Tilling Ltd v Dick, Kerr & Co Ltd* [1905] 1 KB 562; *Edgington v Swindon Corpn* [1939] 1 KB 86, [1938] 4 All ER 57; *Provender Millers (Winchester) Ltd v Southampton County Council* [1940] Ch 131, [1939] 4 All ER 157, CA.

³ *A-G v Gas Light and Coke Co* (1877) 7 ChD 217; see also *T Tilling Ltd v Dick, Kerr & Co Ltd* [1905] 1 KB 562; *Allen v Gulf Oil Refining Ltd* [1981] AC 1001 at 1015, [1981] 1 All ER 353 at 359, HL, per Lord Edmund-Davies.

UPDATE

179-196 Liability

Civil sanctioning powers may be conferred on certain regulators in relation to specific offences: see Regulatory Enforcement and Sanctions Act 2008 Pt 3 (ss 36-71); and PARA 196A.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(1) LIABILITY/(ii) Tort/C. ACTION FOR BREACH OF COMMON LAW DUTIES/194. Preservation of remedies for nuisance.

194. Preservation of remedies for nuisance.

An express proviso contained in a statute that in the event of a nuisance being caused the rights of action of third parties in respect thereof are to remain unprejudiced, amounts to a permission to exercise powers conferred by the statute, but if in so doing the undertakers occasion a nuisance they must bear the consequences¹. Statutes which impose upon a local authority the duty of effectually draining its district and confer upon it power to drain into the sea, rivers, and streams, with a proviso against committing a nuisance thereby, do not

authorise or justify the pollution of such waters², nor do statutes with a similar proviso empowering bodies or persons to supply electricity or gas protect undertakers from liability for nuisance³. As a general rule, however, an undertaker is not liable for a nuisance which is attributable to its performance of a duty imposed by statute, even if by statute it is expressly made liable, or not exempted from liability, for nuisance⁴. An undertaker cannot escape liability simply by arguing that its actions were outside its power where those actions have created a nuisance⁵. Some statutes contain words expressly or impliedly limiting liability to a specific class of acts or omissions⁶.

1 *Powell v Fall* (1880) 5 QBD 597, CA; *Mansel v Webb* (1918) 88 LJKB 323, CA; *Slater v McLellan* 1924 SC 854 (sparks from an engine); *Galer v Rawson* (1889) 6 TLR 17, CA; *Bantwick v Rogers* (1891) 7 TLR 542; *Jeffery v St Pancras Vestry* (1894) 63 LJQB 618, DC; *Watkins v Reddin* (1861) 2 F & F 629; *Leonard v Monaghan County Council* (1913) 77 JP Jo 305 (frightening horses). A motor vehicle used on a public road has been held not to be a nuisance merely by reason of its liability to skid: see *Wing v London General Omnibus Co* [1909] 2 KB 652, CA; *Isaac Walton & Co v Vanguard Motorbus Co*, *Gibbons v Vanguard Motorbus Co* (1908) 25 TLR 13, DC; *Parker v London General Omnibus Co Ltd* (1909) 101 LT 623, CA; *Department of Transport v North West Water Authority* [1984] AC 336 at 359, [1983] 3 All ER 273 at 276, HL. As to statutory nuisances in relation to motor vehicles see NUISANCE vol 34 (Reissue) para 36; ROAD TRAFFIC vol 40(1) (2007 Reissue) para 614. As to negligence in the use of motor vehicles see NEGLIGENCE vol 33 (Reissue) para 653. See also *Chichester Corp v Foster* [1906] 1 KB 167, DC; *Armagh Union Guardians v Bell* [1900] 2 IR 371, CA; *A-G v Scott* [1904] 1 KB 404, CA; *Gas Light and Coke Co v St Mary Abbott's, Kensington, Vestry* (1885) 15 QBD 1, CA; *Radstock Co-operative and Industrial Society Ltd v Norton-Radstock UDC* [1968] Ch 605, [1968] 2 All ER 59, CA. See also the Land Compensation Act 1973 s 1 (as amended) (right to compensation for depreciation in land value caused by nuisance attributable to certain public works in respect of which immunity from suit for nuisance has been granted by statute); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 884.

2 *Oldaker v Hunt* (1854) 19 Beav 485; *A-G v Luton Local Board of Health* (1856) 2 Jur NS 180; *A-G v Birmingham Borough Council* (1858) 4 K & J 528; *Manchester, Sheffield, etc Rly Co v Worksop Board of Health* (1857) 23 Beav 198; *Bidder v Croydon Local Board of Health* (1862) 6 LT 778; *A-G v Metropolitan Board of Works* (1863) 9 LT 139; *A-G v Kingston-on-Thames Corp* (1865) 34 LJ Ch 481; *Cator v Lewisham Board of Works* (1864) 5 B & S 115 at 127; *Goldsmid v Tunbridge Wells Improvement Comrs* (1866) 1 Ch App 349 at 352; *A-G v Richmond* (1866) LR 2 Eq 306; *Glossop v Heston and Isleworth Local Board* (1878) 12 ChD 102, CA; *A-G v Leeds Corp* (1870) 5 Ch App 583; *A-G v Dorchester Corp* (1905) 93 LT 290, DC; *Earl Harrington v Derby Corp* [1905] 1 Ch 205; *Foster v Warblington UDC* [1906] 1 KB 648, CA; *Owen v Faversham Corp* (1908) 72 JP 404 (affd 73 JP 33, CA); *Price's Patent Candle Co Ltd v LCC* [1908] 2 Ch 526, CA.

3 *Shelfer v City of London Electric Lighting Co*, *Meux's Brewery Co v City of London Electric Lighting Co* [1895] 1 Ch 287, CA (vibration and noise from machinery); *Jordeson v Sutton, Southcoates and Drypool Gas Co* [1899] 2 Ch 217, CA (withdrawal of support and obstruction of ancient lights); *Colwell v St Pancras Borough Council* [1904] 1 Ch 707 (vibration from new machinery); *Demerara Electric Co v White* [1907] AC 330, PC (noise and vibration); *Midwood & Co Ltd v Manchester Corp* [1905] 2 KB 597, CA (damage by explosion), followed in *Charing Cross, West End and City Electricity Supply Co v London Hydraulic Power Co* [1913] 3 KB 442 (affd [1914] 3 KB 772, CA); *Goodbody v Poplar Borough Council* (1914) 84 LJKB 1230, DC (distinguishing *Midwood & Co Ltd v Manchester Corp* supra and *Charing Cross, West End and City Electricity Supply Co v London Hydraulic Power Co* supra); *A-G v Gas Light and Coke Co* (1877) 7 ChD 217 (nuisance alleged to be inevitable if gas of the statutory standard was to be manufactured); *Wise v Metropolitan Electric Supply Co* (1894) 10 TLR 446; *Knight v Isle of Wight Electric Light and Power Co* (1904) 73 LJ Ch 299; *Dexter v Aldershot UDC* (1915) 79 JP Jo 580 (noise and vibration caused by electrical power station); see also *Manchester Corp v Farnworth* [1930] AC 171, HL (fumes from electricity works; in this case the proviso as to nuisance was not incorporated in the relevant Act); *Shell-Mex and BP Ltd v Belfast Corp* [1952] NI 72 (fracture of gas main resulting from operations of third party; undertakers negligent in failing to guard against damage to main); cf *Dunne v North Western Gas Board* [1964] 2 QB 806, [1963] 3 All ER 916, CA (no liability for gas explosion in absence of negligence); *Pearson v North Western Gas Board* [1968] 2 All ER 669. See generally FUEL AND ENERGY vol 19(2) (2007 Reissue) para 1301.

4 *Department of Transport v North West Water Authority* [1984] AC 336 at 359-361, [1983] 3 All ER 273 at 276-277, HL, per Lord Fraser of Tullybelton. See also *Stretton's Derby Brewery Co v Derby Corp* [1894] 1 Ch 431; *Smeaton v Ilford Corp* [1954] Ch 450, [1954] 1 All ER 923.

5 *Campbell v Metropolitan Borough of Paddington* [1911] 1 KB 869.

6 *Brocklehurst v Manchester, Bury, Rochdale and Oldham Steam Tramways Co* (1886) 17 QBD 118, DC (liability limited to damage caused by the act or default of the defendants or their servants).

UPDATE

179-196 Liability

Civil sanctioning powers may be conferred on certain regulators in relation to specific offences: see Regulatory Enforcement and Sanctions Act 2008 Pt 3 (ss 36-71); and PARA 196A.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(1) LIABILITY/(ii) Tort/C. ACTION FOR BREACH OF COMMON LAW DUTIES/195. Instances of liability.

195. Instances of liability.

The right to commit a nuisance in the exercise of permissive powers has been negated in the following cases, namely, in providing public urinals¹; in providing hospitals where the provision was not made compulsory²; in taking water for a canal from a stream, when the stream had become polluted, thus creating a public nuisance³; in irrigating lands by the compulsory diversion of streams and running the water off through adjacent lands⁴; in dredging a river⁵; in the running of tramways by using brine to keep the road clear of snow⁶, or by using raised rails during reconstruction⁷, or by noise and smell from stables⁸ or by not taking reasonable care in attending to the lines⁹, or in driving the cars¹⁰; in repairing roads by using heavy steam rollers¹¹; in using locomotives on a railway so as to cause a nuisance by smoke from the engines¹²; in granting a licence to erect an embankment which obstructed the right of access of riparian owners, when the statute under which the licence was granted gave the power only to authorise an obstruction of public navigation¹³; in the discharge of sewage¹⁴; in allowing water to escape from a canal¹⁵; in permitting trees on the highway to cause subsidence on neighbouring land¹⁶; and in failing to remove a gipsy encampment from council land¹⁷.

1 *Vernon v St James, Westminster Vestry* (1880) 16 ChD 449, CA; *Biddulph v St George, Hanover Square, Vestry* (1863) 33 LJ Ch 411; *Spicer v Margate Corp* (1880) 24 Sol Jo 821; *Sellors v Matlock Bath Local Board* (1885) 14 QBD 928; *Parish v City of London Corp* (1901) 67 JP 55; *Leyman v Hessle UDC* (1902) 67 JP 56. The mere proximity of a urinal does not constitute a nuisance: *Mudge v Penge UDC* (1916) 86 LJ Ch 126; see also *Mogg v Bocken* (1888) 5 TLR 22; *Pethick v Plymouth Corp* (1893) 58 JP 476; *Mason v Wallasey Local Board* (1876) 58 JP 477; *Mayo v Seaton UDC* (1903) 68 JP 7.

2 *Metropolitan Asylum District Managers v Hill* (1881) 6 App Cas 193, HL (approved in *Canadian Pacific Rly Co v Parke* [1899] AC 535, PC); *A-G v Colney Hatch Lunatic Asylum* (1868) 4 Ch App 146. See also *A-G v Birmingham Borough Council* (1858) 4 K & J 528.

3 *R v Bradford Navigation Co* (1865) 6 B & S 631.

4 *Canadian Pacific Rly Co v Parke* [1899] AC 535, PC.

5 *East London Rly Co v River Thames Conservators* (1904) as reported in 68 JP 302.

6 *Ogston v Aberdeen District Tramways Co* [1897] AC 111, HL.

7 *T Tilling Ltd v Dick, Kerr & Co Ltd* [1905] 1 KB 562.

8 *Rapier v London Tramway Co* [1893] 2 Ch 588, CA.

9 *Sadler v South Staffordshire and Birmingham District Steam Tramways Co* (1889) 23 QBD 17, CA.

10 *Rattee v Norwich Electric Tramways Co* (1902) 18 TLR 562, CA.

- 11 *Chichester Corpn v Foster* [1906] 1 KB 167, DC. See also *Gas Light and Coke Co v St Mary Abbott's, Kensington, Vestry* (1885) 15 QBD 1, CA.
- 12 *Smith v Midland Rly Co and Lancashire and Yorkshire Rly Co* (1877) 26 WR 10.
- 13 *Lyon v Fishmongers' Co* (1876) 1 App Cas 662, HL.
- 14 *Jones v Llanrwst UDC* [1911] 1 Ch 393; see also the Public Health Act 1936 s 31 (repealed: see now the Water Industry Act 1991 s 117(5), (6)); *Haigh v Deudrath RDC* [1945] 2 All ER 661; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 1069. In the absence of negligence a local authority is not liable for the escape of sewage (*Smeaton v Ilford Corpn* [1954] Ch 450, [1954] 1 All ER 923), nor in the absence of negligence is a gas board liable for gas explosions (*Dunne v North Western Gas Board* [1964] 2 QB 806, [1963] 3 All ER 916, CA; *Pearson v North Western Gas Board* [1968] 2 All ER 669). See also *C Burley Ltd v Edward Lloyd Ltd* (1929) 45 TLR 626.
- 15 *Boxes v British Waterways Board* [1971] 2 Lloyd's Rep 183, CA.
- 16 *Russell v Barnet London Borough Council* (1984) 83 LGR 152.
- 17 *Page Motors Ltd v Epsom and Ewell District Council* (1981) 80 LGR 337, CA.

UPDATE

179-196 Liability

Civil sanctioning powers may be conferred on certain regulators in relation to specific offences: see Regulatory Enforcement and Sanctions Act 2008 Pt 3 (ss 36-71); and PARA 196A.

195-196 Instances of liability, Criminal offences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(1) LIABILITY/(iii) Criminal Liability/196. Criminal offences.

(iii) Criminal Liability

196. Criminal offences.

It is a question of construction in each case whether or not a breach of statutory duty for which Parliament has provided no remedy creates an offence¹. Unless the duty is prohibitory in nature and was imposed by an ancient statute which provides no other means for enforcing the duty², it is highly unlikely that a breach of statutory duty will amount to an offence³. It is a common law offence to obstruct the execution of powers granted by statute, provided that the statute regulates public and not merely private rights⁴. Disobedience to the orders of a competent tribunal is usually indictable as a common law offence⁵.

Misbehaviour in a public office is a common law offence⁶, which appears to embrace a wide variety of forms of conduct including the oppressive use of powers to compel someone to act in a particular way, corruption, bribery and partiality⁷. The offence also embraces the deliberate failure or wilful neglect, without reasonable excuse or justification, of a public officer to perform

a duty which he was bound to perform by common law or statute⁸. It is not necessary that there exist an element of dishonesty but the misconduct impugned must be calculated to injure the public interest so as to call for condemnation and punishment⁹. There are also a number of specific common law and statutory offences which may be committed by or in respect of public officers. These include offences in respect of official secrets¹⁰, the disclosure of confidential information¹¹, oppression (that is the infliction of unlawful bodily harm, imprisonment or injury other than extortion from any improper motive)¹², bribery and corruption¹³, and the sale of any public office¹⁴. Public officers are subject to prosecution for criminal offences in the same way as other persons, for example in respect of obtaining property by deception¹⁵. Further statutory and common law offences are applicable to particular officers, such as sheriffs¹⁶, gaolers and prison officers¹⁷, justices of the peace¹⁸, officers in the armed forces¹⁹, post office servants²⁰, and local government officers²¹.

1 *R v Horseferry Road Justices, ex p Independent Broadcasting Authority* [1987] QB 54 at 72, [1986] 2 All ER 666 at 674, DC, per Lloyd LJ ('it requires clear language, or a very clear inference, to create a crime'); see STATUTES vol 44(1) (Reissue) para 1355.

2 *R v Horseferry Road Justices, ex p Independent Broadcasting Authority* [1987] QB 54 at 72, [1986] 2 All ER 666 at 674, DC, per Lloyd LJ.

3 *R v Horseferry Road Justices, ex p Independent Broadcasting Authority* [1987] QB 54 at 72, [1986] 2 All ER 666 at 674, DC, per Lloyd LJ ('In the case of a mandatory duty imposed by a modern statute enforceable by way of judicial review, the inference that Parliament did not intend to create an offence in the absence of an express provision to that effect is, nowadays, almost irresistible'). The Law Commission has recommended the abolition of the use of criminal prosecution as a method of enforcing public duties: see the *Report on Conspiracy and Criminal Law Reform* (Law Com no 76) (1975-76) paras 6.1-6.5.

4 *R v Smith* (1780) 2 Doug KB 441; *R v Richards* (1800) 8 Term Rep 634. Quaere whether the proposition in the text should be qualified by the doctrine of construction set out in *R v Horseferry Road Justices, ex p Independent Broadcasting Authority* [1987] QB 54, [1986] 2 All ER 666, DC; see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 534.

5 *R v Robinson* (1759) 2 Burr 799 at 804; *R v Harris* (1791) 4 Term Rep 202 (disobedience to Order in Council where no specific punishment prescribed).

6 *R v Llewellyn-Jones* [1968] 1 QB 429, [1967] 3 All ER 225, CA; *R v Hall* [1891] 1 QB 747: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 528 et seq.

7 *R v Llewellyn-Jones* [1968] 1 QB 429, [1967] 3 All ER 225, CA; *R v Dytham* [1979] QB 722, [1979] 3 All ER 641, CA: see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 528 et seq.

8 *R v Dytham* [1979] QB 722 at 727, [1979] 3 All ER 641 at 644, CA, per Lord Widgery CJ.

9 *R v Dytham* [1979] QB 722 at 727-728, [1979] 3 All ER 641 at 644, CA, per Lord Widgery CJ. Whether such a degree of culpability exists in a particular case is a question for the jury. Most of the reported cases, however, contain an element of dishonesty: see *R v Bembridge* (1783) 3 Doug KB 327 (gross deceit by accountant); *R v Borron* (1820) 3 B & Ald 432 (dishonest, oppressive or corrupt motive required); *R v Marshall* (1855) 4 E & B 475 at 480 (malicious obstruction of course of justice by judge); *R v Llewellyn-Jones* [1968] 1 QB 429, [1967] 3 All ER 225, CA (registrar of county court obtaining improper advantage). See further CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 528 et seq.

10 See the Official Secrets Acts 1911 to 1989; the European Communities Act 1972 s 11(2); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) paras 493, 503.

11 See eg the Agricultural Marketing Act 1958 s 47(2), (3) (s 47 as amended) (see AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) para 540); the Financial Services Act 1986 s 179 (as amended), s 181; and the Consumer Protection Act 1987 s 38 (as amended) (see SALE OF GOODS AND SUPPLY OF SERVICES vol 41 (2005 Reissue) para 401).

12 The cases mainly concern magistrates: see eg *R v Okey* (1722) 8 Mod Rep 45; CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 536; MAGISTRATES.

13 See the Public Bodies Corrupt Practices Act 1889 s 1; the Prevention of Corruption Act 1906 s 1 (as amended); *R v Smith* [1960] 2 QB 423, [1960] 1 All ER 256, CCA; *R v Sporle* [1972] 1 All ER 65, [1972] 1 WLR

118, CA; *R v Andrews-Weatherfoil* [1972] 1 All ER 65, [1972] 1 WLR 118, CA; *R v Barrett* [1976] 3 All ER 895, [1976] 1 WLR 946, CA; *DPP v Manners* [1978] AC 43, [1977] 1 All ER 316, HL; *R v Braithwaite* [1983] 2 All ER 87, [1983] 1 WLR 385, CA; *R v Parker* (1985) 82 Cr App Rep 69, CA; para 9 ante; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) paras 321, 529.

14 See the Sale of Offices Act 1809; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 535.

15 See the Theft Act 1968 s 15(1). The common law offence of extortion by colour of office or franchise and certain statutory offences relating to extortion by public officers have been abolished: see s 32(1), Sch 1.

16 See the Sheriffs Act 1887 s 29 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 541; SHERIFFS vol 42 (Reissue) para 1151.

17 See PRISONS vol 36(2) (Reissue) para 517.

18 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 527 et seq; MAGISTRATES.

19 See ARMED FORCES.

20 See the Post Office Act 1953 ss 57, 58, 59 (all as amended and prospectively repealed); the Theft Act 1968 ss 33(1), (3), 36(3) (as amended), Sch 2 Pt I paras 1, 6, 7, Sch 3 Pt I; the Criminal Damage Act 1971 s 11(8), Schedule Pt II; *Gouriet v Union of Post Office Workers* [1978] AC 435, [1977] 3 All ER 70, HL; and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(1) (2006 Reissue) para 540. See also the Telecommunications Act 1984 ss 44, 45 (as substituted and amended).

21 See the Local Government Act 1972 s 117(2), (3) (as amended). See further LOCAL GOVERNMENT vol 69 (2009) PARA 441.

UPDATE

179-196 Liability

Civil sanctioning powers may be conferred on certain regulators in relation to specific offences: see Regulatory Enforcement and Sanctions Act 2008 Pt 3 (ss 36-71); and PARA 196A.

NOTE 11--Financial Services Act 1986 repealed: SI 2001/3649. Consumer Protection Act 1987 s 38 repealed: Enterprise Act 2002 ss 247(g), 278(2), Sch 26.

195-196 Instances of liability, Criminal offences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(1) LIABILITY/(iii) Criminal Liability/196A. Civil sanctions.

196A. Civil sanctions.

A minister of the Crown, or the Welsh ministers where the provision relates to a Welsh ministerial matter, after appropriate consultation, may by order in accordance with the Regulatory Enforcement and Sanctions Act 2008 Pt 3 (ss 36-71) make provision (1) specified in s 39, to confer on a regulator the power by notice to impose a fixed monetary penalty on a person in relation to a relevant offence; (2) specified in s 42, to confer on a regulator the power

by notice to impose one or more discretionary requirements on a person in relation to a relevant offence; (3) specified in s 46, conferring on a regulator the power to serve a stop notice on a person; (4) specified in s 50, to enable a regulator to accept an enforcement undertaking from a person in a case where the regulator has reasonable grounds to suspect that the person has committed a relevant offence: ss 36, 59, 60. An order may include consequential, supplementary, incidental or transitional provision: s 55. A statutory instrument containing an order under Pt 3 may not be made unless a draft of the instrument has been laid before, and approved by resolution of, each House of Parliament or the National Assembly for Wales, as the case may be: s 61.

'Regulator' means (a) a 'designated regulator' (ie a person specified in Sch 5), or (b) a person, other than a designated regulator, who has an enforcement function in relation to an offence contained, immediately before 21 July 2008 (ie the day on which the Regulatory Enforcement and Sanctions Act 2008 was passed), in an enactment specified in Sch 6 but head (b) does not include the Crown Prosecution Service or a member of a police force: s 37(1), (2), (3)(a), (b). Information held by or on behalf of a person referred to in head (b) may be disclosed to a regulator: s 70.

A 'relevant offence' (i) in relation to a designated regulator, means an offence in relation to which the designated regulator has an enforcement function, and which is contained in an Act immediately before 21 July 2008; (ii) in relation to a regulator other than a designated regulator, means an offence which is contained, immediately before that date, in an enactment specified in Sch 6, and in relation to which that regulator has an enforcement function: Regulatory Enforcement and Sanctions Act s 38.

The power under head (1) may only be conferred in relation to a case where the regulator is satisfied beyond reasonable doubt that the person has committed the relevant offence and the penalty must not exceed the relevant maximum fine in relation to the offence: s 39. Before the regulator can impose a penalty, it must issue a notice of intent in order to give the person subject to the notice the opportunity to make written representations and objections against the penalty or the person may choose to make a discharge payment the level of which must not exceed the penalty: s 40. Where a notice of intent is served on a person, no criminal proceedings for the relevant offence may be instituted against him in respect of the act or omission to which the notice relates before the end of the period in which he may discharge liability to the fixed monetary penalty and if he so discharges liability, he may not at any time be convicted of the relevant offence in relation to that act or omission: s 41.

The power under head (2) to impose one or more discretionary requirements may only be conferred in relation to a case where the regulator is satisfied beyond reasonable doubt that the person has committed a relevant offence: Regulatory Enforcement and Sanctions Act s 42(1), (2). Where a person has been required to pay a variable monetary penalty under s 42(3), the order made by the minister must provide that the person may not be later prosecuted for the same incident of regulatory non-compliance (s 44) and may also allow a regulator to issue a monetary penalty for the failure to comply with the discretionary requirement (s 45). As to the procedure in relation to discretionary requirements see s 43.

Provision under head (2) may include provision for a regulator, by notice, to require a person on whom a discretionary requirement is imposed to pay the costs incurred by the regulator in relation to the imposition of the discretionary requirement up to the time of its imposition: s 53.

A stop notice under head (3) is a notice prohibiting a person from carrying on an activity specified in the notice until he has taken the steps specified in the notice (see s 46) and it must comply with the procedure set out in s 47. Provision under head (3) must include provision for the regulator to compensate the person for loss suffered as the result of the service of the notice: Regulatory Enforcement and Sanctions Act s 48. The provision under s 46 must provide that, where a person on whom a notice is served does not comply with it, the person is guilty of an offence and liable on summary conviction, to a fine not exceeding £20,000, or imprisonment

for term not exceeding 12 months, or both, or, on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both: s 49.

The provision under head (4) is provision to enable a regulator to accept an enforcement undertaking from a person in a case where the regulator has reasonable grounds to suspect that the person has committed a relevant offence, and for the acceptance of the undertaking to have specified consequences: s 50.

A regulator cannot be granted power to impose both a fixed monetary penalty and a discretionary requirement or both a fixed monetary penalty and a stop notice in relation to the same offence: Regulatory Enforcement and Sanctions Act s 51. An order for a fixed monetary penalty may include provision for early payment discounts, for the payment of interest or other financial penalties for late payment of the penalty, such interest or other financial penalties not in total to exceed the amount of that penalty or for enforcement of the penalty: s 52. An order may not provide for the making of an appeal other than to the First-tier Tribunal, or another tribunal created under an enactment: s 54.

Any power of a minister of the Crown or Welsh Minister under enactments specified in Sch 7 to create criminal offences in secondary legislation includes the power to create alternative civil sanctions under Pt 3 and is subject to the affirmative resolution procedure: Regulatory Enforcement and Sanctions Act s 62.

Where power is conferred on a regulator under or by virtue of Pt 3 to impose a civil sanction in relation to an offence, it has a duty to issue guidance as to its use of the sanction (s 63) and about how the offence is enforced (s 64), and, if not inappropriate, to publish reports specifying the cases in which one of such sanctions has been imposed, where a person has discharged his liability to a fixed monetary penalty or where an undertaking is accepted, but such reports should not list those cases where civil sanctions have been overturned on appeal: s 65.

Provision is made to ensure that a regulator complies with regulatory principles (s 66) and for the review of the operation of any provision under heads (1) to (4) (s 67). A regulator may be directed not to issue any further notices imposing one of the new sanctions or to accept enforcement undertakings: s 68.

UPDATE

179-196 Liability

Civil sanctioning powers may be conferred on certain regulators in relation to specific offences: see Regulatory Enforcement and Sanctions Act 2008 Pt 3 (ss 36-71); and PARA 196A.

195-196 Instances of liability ... Criminal offences

Certain functions under provisions mentioned in these paragraphs are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(2) PROTECTION/(i) Judicial Privilege/197. Persons protected.

(2) PROTECTION

(i) Judicial Privilege

197. Persons protected.

Persons exercising judicial functions in a court¹ are exempt from all civil liability whatsoever for anything done or said by them in their judicial capacity², nor can any action be brought against the Crown in respect of acts or omissions of persons discharging responsibilities of a judicial nature or in connection with the execution of judicial process³. A further protection arises from the rule that the record of a court of record cannot, if subsisting and valid upon its face, be traversed in any action against the judge of that court⁴. However, a claim⁵ may be brought against the Crown and a judge where the judicial act infringed a Convention right⁶ and was either done in bad faith or done in good faith where the right infringed is that accorded to victims of arrest and detention⁷. In such cases, any award of damages can be made only against the Crown⁸. Judges, at least of an inferior court, guilty of misfeasance in their public office⁹ may also be the subject of a damages claim¹⁰.

1 All persons are protected who are constituent members of the court. Thus, the sheriff was a constituent member of the old county courts (*Tinsley v Nassau* (1827) Mood & M 52; *Tunno v Morris* (1835) 2 Cr M & R 298); the steward of the hundred courts and courts baron (*Floyd v Barker* (1607) 12 Co Rep 23; *Holroyd v Breare* (1819) 2 B & Ald 473; *Bradley v Carr* (1841) 3 Man & G 221). Members of the jury are members of the court (*Bushell's Case* (1670) Vaugh 135; see JURIES vol 26 (2004 Reissue) para 555). A Crown Prosecution Service lawyer who failed to inform a magistrates' court that an offence had already been taken into consideration in the Crown Court was exercising an administrative function and so was not protected: *Welsh v Chief Constable of the Merseyside Police* [1993] 1 All ER 692. As to the protection afforded to counsel, witnesses and parties for words spoken in the course of the proceedings see LIBEL AND SLANDER vol 28 (Reissue) para 97. As to the protection afforded to superior courts and inferior courts see paras 199, 201 post.

2 'No matter that the judge was under some gross error or ignorance, or was activated by envy, hatred and malice and all uncharitableness, he is not liable to an action': *Sirros v Moore* [1975] QB 118 at 132, [1974] 3 All ER 776 at 782, CA, per Lord Denning MR. This rule is of the highest antiquity; the earliest notice there is of its extension to jurors is in YB 21 Edw 3 (1346) Hil pl 19 (see note 1 supra); but other early cases of its application are given in Lib Ass 27 Edw 3, pl 18 (1353); YB 9 Hen 6, 60, pl 9 (1431); 1 Roll Abr 92, p 1 (1431); YB 9 Edw 4, 3, pl 10 (1469); YB 21 Edw 4, 67, pl 49 (1481). Other cases in which the general rule has been stated or acted upon are *Floyd v Barker* (1607) 12 Co Rep 23; *Anon* (1610) 1 Roll Abr 92; *Metcalf v Hodgson* (1623) Hut 120; *Bushell's Case* (1670) 1 Mod Rep 119; *Hamond v Howell* (1674) 1 Mod Rep 184; *Wytham v Dutton* (1688) 3 Mod Rep 160; *Raine's Case* (1697) 1 Ld Raym 262; *Groenvelt v Burwell* (1700) 1 Ld Raym 454 at 468; *R v Skinner* (1772) Lofft 54; *Taafe v Downes* (1813) 3 Moo PCC 36n; *Miller v Hope* (1824) 2 Sh Sc App 125, HL; *Garnett v Ferrand* (1827) 6 B & C 611; *Dicas v Lord Brougham* (1833) 6 C & P 249; *Kendillon v Maltby* (1842) Car & M 402 (discussed in *Munster v Lamb* (1883) 11 QBD 588, CA); *Acland v Buller* (1848) 1 Exch 837; *Hamilton v Anderson* (1858) 3 Macq 363, HL; *Kemp v Neville* (1861) 10 CBNS 523; *Thomas v Churton* (1862) 2 B & S 475; *Fray v Blackburn* (1863) 3 B & S 576; *Scott v Stansfield* (1868) LR 3 Exch 220; *Johnson v Cooke* (1872) 17 Sol Jo 30; *Haggard v Pélacier Frères* [1892] AC 61, PC; *Anderson v Gorrie* [1895] 1 QB 668, CA; *Law v Llewellyn* [1906] 1 KB 487, CA; *Bottomley v Brougham* [1908] 1 KB 584; *Everett v Griffiths* [1921] 1 AC 631, HL; *Sirros v Moore* supra. See also *Re McC* [1985] AC 528, [1984] 3 All ER 908, HL.

3 Crown Proceedings Act 1947 s 2(5). This may have to be disapplied where the right infringed by the court is one accorded by European law: Case C-6/90 *Franovich v Italy* [1991] ECR I-5357, ECJ; (Joined Cases C-46 and 48/93) *Brasserie du Pêcheur SA v Germany* [1996] All ER (EC) 301, ECJ; and see further the cases cited in para 186 note 8 ante. Cf *Maharaj v A-G of Trinidad and Tobago (No 2)* [1979] AC 385, [1978] 2 All ER 670, PC (barrister committed by judge for contempt in contravention of principles of natural justice entitled to damages out of public funds by reason of breach of constitutional guarantee of fundamental rights).

4 As to what courts are courts of record see COURTS vol 10 (Reissue) para 308; and cf LIBEL AND SLANDER vol 28 (Reissue) para 127. As to the operation of this rule see *Bonham's Case* (1610) 8 Co Rep 114a (severely commented on in *Groenvelt v Burwell* (1700) 1 Ld Raym 454 at 468); *Gray v Cookson* (1812) 16 East 13; *Basten v Carew* (1825) 3 B & C 649; *Aldridge v Haines* (1831) 2 B & Ad 395; *Ashcroft v Bourne* (1832) 3 B & Ad 684; *Kemp v Neville* (1861) 10 CBNS 523; and see *Basébé v Matthews* (1867) LR 2 CP 684.

5 Ie under the Human Rights Act 1998 s 9(3): see para 87 ante.

6 For the meaning of 'Convention rights' see para 87 note 1 ante.

7 See the Human Rights Act 1998 s 1, Sch 1 art 5 (incorporating the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) Cmd 8969) art 5: see CONSTITUTIONAL LAW AND HUMAN RIGHTS).

8 Human Rights Act 1998 s 9(4).

9 See *Three Rivers District Council v Governor and Company of the Bank of England (No 3)* [2000] 3 All ER 1, [2000] 2 WLR 1220, HL.

10 See paras 188 ante, 201 note 1 post.

UPDATE

197 Persons protected

NOTE 3--See *Quinland v Governor of Swaleside Prison* [2002] EWCA Civ 174, [2003] QB 306, [2003] 1 All ER 1173 (Crown Court clerk's erroneous calculation of defendant's custodial sentence connected with execution of judicial process).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(2) PROTECTION/(i) Judicial Privilege/198. Reasons for protection.

198. Reasons for protection.

The object of judicial privilege is not to protect malicious or corrupt judges, but to protect the public from the danger to which the administration of justice would be exposed if the persons concerned therein were subject to inquiry as to malice, or to litigation with those whom their decisions might offend. It is necessary that such persons should be permitted to administer the law not only independently and freely and without favour, but also without fear¹.

1 As to the objects of judicial privilege see *Taaffe v Downes* (1813) 3 Moo PCC 36n, reported in *Calder v Halket* (1839-40) 3 Moo PCC 28 at 36n; *Yates v Lansing* (1809) 5 Johnson's Reports 282 at 291-298 per Kent CJ; *Miller v Hope* (1824) 2 Sh Sc App 125 at 143, HL, per Lord Gifford ('no man but a beggar or a fool would be a judge'); *Scott v Stansfield* (1868) LR 3 Exch 220 at 223 per Kelly CB; *Bottomley v Brougham* [1908] 1 KB 584 at 587 per Channell J; *Sirros v Moore* [1975] QB 118 at 132, [1974] 3 All ER 776 at 782, CA, per Lord Denning MR; cf *Arenson v Casson Beckman Rutley & Co* [1977] AC 405 at 431, [1975] 3 All ER 901 at 918, HL, per Lord Kilbrandon (judge's duty owed to the state, not to the litigants).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(2) PROTECTION/(i) Judicial Privilege/199. Requirements for protection.

199. Requirements for protection.

To entitle any person to the protection of judicial privilege, the proceedings out of which the action arises must be the judicial proceedings of a tribunal which is, in the eyes of the law, a court¹. The protection applies to all courts of justice and to certain other courts having similar attributes². Thus, among courts of justice it has been applied not only to the superior courts³, but also to inferior courts of record⁴ and to inferior courts of justice not of record⁵. The protection is also applied to analogous tribunals other than courts of justice⁶, if the tribunal has

similar attributes to a court of law⁷ and is recognised by law⁸. It is not, however, sufficient that the tribunal should be acting judicially; it must also be a court or authorised tribunal⁹.

1 *Royal Aquarium and Summer and Winter Garden Society v Parkinson* [1892] 1 QB 431 at 447, CA, per Fry LJ. See also LIBEL AND SLANDER vol 28 (Reissue) para 98.

2 *Royal Aquarium and Summer and Winter Garden Society v Parkinson* [1892] 1 QB 431 at 442, CA, per Lord Esher MR; *Trapp v Mackie* [1979] 1 All ER 489, [1979] 1 WLR 377, HL; *Hasselblad (GB) Ltd v Orbinson* [1985] QB 475, [1985] 1 All ER 173, CA.

3 Eg the Lord Chancellor (*Dicas v Lord Brougham* (1833) 6 C & P 249); the judges of the Queen's Bench (*Taaffe v Downes* (1813) 3 Moo PCC 36n; *Fray v Blackburn* (1863) 3 B & S 576); the former Court of the County Palatine of Durham (*Peacock v Bell and Kendal* (1667) 1 Saund 69); the sheriff-substitute in Scotland (*Hamilton v Anderson* (1858) 3 Macq 363, HL); the supreme court of a colony (*Anderson v Gorrie* [1895] 1 QB 668, CA). The Crown Court is a superior court of record: see the Supreme Court Act 1981 s 45(1) (see COURTS vol 10 (Reissue) para 621); *Sirros v Moore* [1975] QB 118, [1974] 3 All ER 776, CA, per Lord Denning MR and Ormrod LJ (but cf Buckley LJ: Crown Court an inferior court for certain purposes). See para 201 note 4 post.

4 Eg the Lord Mayor and Recorder of London (*Bushell's Case* (1670) 1 Mod Rep 119); county court judges (*Scott v Stansfield* (1868) LR 3 Exch 220; *Johnson v Cooke* (1872) 17 Sol Jo 30); the sheriff of York holding a court of record (*Metcalfe v Hodgson* (1623) Hut 120, in which the general proposition was laid down that inferior courts of record are entitled to the same protection as superior courts); coroners (*Floyd v Barker* (1607) 12 Co Rep 23 at 24; *Hamond v Howell* (1677) 2 Mod Rep 218; *Thomas v Churton* (1862) 2 B & S 475; *R v West Yorkshire Coroner, ex p Smith (No 2)* [1985] QB 1096, [1985] 1 All ER 100, DC; and see CORONERS vol 9(2) (2006 Reissue) para 1027); the chancellor of the University of Cambridge (*Kemp v Neville* (1861) 10 CBNS 523); the commissioners of a court of requests (*Aldridge v Haines* (1831) 2 B & Ad 395); the Royal College of Physicians exercising a power of fine and imprisonment against practitioners (*Groenvelt v Burwell* (1700) 1 Ld Raym 454, dissenting from *Bonham's Case* (1610) 8 Co Rep 114a; and see *Groenvelt's Case* (1697) 1 Ld Raym 213; *Groenvelt v Burrell* (1697) 1 Ld Raym 252). The protection afforded to inferior courts is not as comprehensive as the protection afforded to superior courts: see *Re McC* [1985] AC 528, [1984] 3 All ER 908, HL; and para 201 post.

5 Eg an employment tribunal (*Peach Grey & Co v Sommers* [1995] ICR 549, DC); the sheriff holding the old county courts (*Tinsley v Nassau* (1827) Mood & M 52; *Tunno v Morris* (1835) 2 Cr M & R 298); the stewards of the hundred courts and courts baron (*Floyd v Barker* (1607) 12 Co Rep 23; *Holroyd v Breare* (1819) 2 B & Ald 473; *Bradley v Carr* (1841) 3 Man & G 221); consuls exercising abroad the jurisdiction of the consular courts (*Haggard v Pélitier Frères* [1892] AC 61, PC); Indian magistrates (*Calder v Halket* (1839-40) 3 Moo PCC 28 at 36); members of the ecclesiastical courts (*Ackerley v Parkinson* (1815) 3 M & S 411); and justices of the peace acting judicially (*Law v Llewellyn* [1906] 1 KB 487, CA; *Hodson v Pare* [1899] 1 QB 455, CA; *Sirros v Moore* [1975] QB 118, [1974] 3 All ER 776, CA; see LIBEL AND SLANDER vol 28 (Reissue) para 98). As to the special position of justices of the peace see para 200 post; the Justices of the Peace Act 1997 ss 51, 52 (both prospectively amended); *Re McC* [1985] AC 528, [1984] 3 All ER 908, HL; cf *Sirros v Moore* supra; and see MAGISTRATES vol 29(2) (Reissue) paras 565-566. The protection afforded to inferior courts is not as comprehensive as the protection afforded to superior courts: see *Re McC* supra; and para 201 post.

6 Eg members of a commission issued by a bishop under statute (*Barratt v Kearns* [1905] 1 KB 504, CA; see LIBEL AND SLANDER vol 28 (Reissue) para 98); members of courts-martial (*Dawkins v Lord Rokeby* (1866) 4 F & F 806; *Jekyll v Sir John Moore* (1806) 6 Esp 63; *Home v Lord Bentinck* (1820) 4 Moore CP 563; and see ARMED FORCES vol 2(2) (Reissue) para 53); a military service tribunal (*Copartnership Farms v Harvey-Smith* [1918] 2 KB 405) (but qualified privilege, only, attaches to a letter written to the military representative at the tribunal (*Gerhold v Baker* (1918) 35 TLR 102, CA)); an arbitration tribunal set up by statute (*Slack v Barr* (1918) 82 JP 91); commissioners of taxes (*Earl of Radnor v Reeve* (1801) 2 Bos & P 391; *Simpkin v Robinson* (1881) 45 LT 221, DC; *Slaney (Inspector of Taxes) v Kean* [1970] Ch 243, [1970] 1 All ER 434; cf *Ranaweera v Wickramasinghe* [1970] AC 951, PC); the Law Society and its disciplinary committee (*Lilley v Roney* (1892) 61 LJQB 727, DC; *Addis v Crocker* [1961] 1 QB 11, [1961] 2 All ER 629, CA; see LEGAL PROFESSIONS vol 65 (2008) PARA 604 et seq; and see also *Marrinan v Vibart* [1963] 1 QB 528, [1962] 3 All ER 380, CA; *Lincoln v Daniels* [1962] 1 QB 237, [1961] 3 All ER 740, CA); a local inquiry into the dismissal of a headmaster from his post before a commissioner appointed by the Secretary of State for Scotland pursuant to statutory power (*Trapp v Mackie* [1979] 1 All ER 489, [1979] 1 WLR 377, HL); and as to disciplinary proceedings involving members of the bar see LEGAL PROFESSIONS vol 66 (2009) PARA 1254; cf *General Medical Council v British Broadcasting Corporation* [1998] 3 All ER 426, [1998] 1 WLR 1573, CA (GMC is a professional conduct committee and not a court for the purposes of contempt). As to the position of commissioners of bankruptcy under previous statutes see *Bracy's Case* (1696) Comb 391; *Gregory's Case* (1697) 5 Mod Rep 368; *Dyer v Missing* (1775) 2 Wm BI 1035; *Miller v Seare* (1777) 2 Wm BI 1141; *Doswell v Impey* (1823) 1 B & C 163. As bankruptcy matters are now in the jurisdiction of the High Court, no such question arises: *Bottomley v Brougham* [1908] 1 KB 584. As to arbitrators see para 205 post. The protection applies also to select committees of either House of Parliament (*Goffin v Donnelly* (1881) 6 QBD 307, DC), for Parliament, although its duties are as a whole deliberative and legislative

and only partly judicial, is nevertheless a court (*Royal Aquarium and Summer and Winter Garden Society v Parkinson* [1892] 1 QB 431 at 446, CA, per Fry LJ). See also the German Conventions Act 1955 s 1(1), by which statutory protection was afforded to members and officers of certain specified tribunals; and the Mental Health Act 1983 s 139 (as amended) (statutory protection of members of mental health review tribunals) (see MENTAL HEALTH vol 30(2) (Reissue) para 407).

The protection does not apply to an investigation by the EC Commission under the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmd 5179) art 85 and EEC Council Regulation 17/62 into a complaint that a company was carrying on business contrary to the EC Treaty art 81: *Hasselblad (GB) Ltd v Orbinson* [1985] QB 475, [1985] 1 All ER 173, CA; *Iberian UK Ltd v BPB Industries plc* [1997] ICR 164. See para 200 note 1 post.

7 *Royal Aquarium and Summer and Winter Garden Society v Parkinson* [1892] 1 QB 431, CA; *O'Connor v Waldron* [1935] AC 76 at 81, PC; *Trapp v Mackie* [1979] 1 All ER 489, [1979] 1 WLR 377, HL; *Hasselblad (GB) Ltd v Orbinson* [1985] QB 475, [1985] 1 All ER 173, CA. Tort proceedings before statutory tribunals obliged to act judicially and in accordance with the principles of natural justice do not necessarily or usually enjoy absolute privilege in the law of defamation: see eg *Royal Aquarium and Summer and Winter Garden Society v Parkinson* supra; *Collins v Henry Whiteway & Co Ltd* [1927] 2 KB 378; though cf *Thompson v Turbott* [1962] NZLR 298. See further para 205 post.

8 *Dawkins v Lord Rokeby* (1873) LR 8 QB 255 at 263, Ex Ch; *Trapp v Mackie* [1979] 1 All ER 489, [1979] 1 WLR 377, HL; *Hasselblad (GB) Ltd v Orbinson* [1985] QB 475, [1985] 1 All ER 173, CA. Tribunals 'recognised by law' are not necessarily confined to tribunals constituted as recognised by Act of Parliament (see eg *Lincoln v Daniels* [1962] 1 QB 237, [1961] 3 All ER 740, CA (inquiry by bench of an inn of court)) but include all that are (*Trapp v Mackie* supra at 492 and 380 per Lord Diplock).

9 *Royal Aquarium and Summer and Winter Garden Society v Parkinson* [1892] 1 QB 431 at 477, CA, per Fry LJ; *Barratt v Kearns* [1905] 1 KB 504, CA; *O'Connor v Waldron* [1935] AC 76, PC; *Arenson v Casson Beckman Rutley & Co* [1977] AC 405, [1975] 3 All ER 901, HL; *Trapp v Mackie* [1979] 1 All ER 489 at 491, [1979] 1 WLR 377 at 379, HL, per Lord Diplock. See COURTS; LIBEL AND SLANDER vol 28 (Reissue) para 98; and note 8 supra.

UPDATE

199 Requirements for protection

NOTE 3--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

NOTE 5--Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(2) PROTECTION/(i) Judicial Privilege/200. Protected proceedings.

200. Protected proceedings.

The protection of judicial privilege applies only to judicial proceedings as contrasted with administrative or ministerial proceedings¹; and, where a judge acts both judicially and ministerially or administratively, the protection is not afforded to acts done in the latter capacity². Thus, the act of hearing and determining an action is a ministerial act, and therefore a refusal, even by a judge of a superior court³, to try a case may be actionable, whereas a wrong decision is not⁴. Similarly, where justices of the peace make an order in their judicial capacity, and subsequently carry it out in their administrative capacity by their servants, negligence in the latter operation may be actionable⁵. Duties, however, which are partly judicial and partly ministerial, such as the duty of admitting to bail, are not severable so as to admit of liability for any part of the acts done in fulfilment thereof⁶.

1 Thus, while the taxation of a bill of costs by a master of the High Court is a judicial proceeding, and written statements by a solicitor in the objections lodged in the taxation are absolutely privileged (*Pedley v Morris* (1891) 61 LJQB 21, DC), the delivery of a bill of costs to a client by a solicitor under an order of the court is not a judicial proceeding and is not so privileged (*Bruton v Downes* (1859) 1 F & F 668); an investigation by the EC Commission under the Treaty Establishing the European Community (Rome, 25 March 1957; TS 1 (1973); Cmnd 5179) art 85 and EEC Council Regulation 17/62 into a complaint that a company was carrying on business contrary to EC Treaty art 81 was administrative rather than judicial in nature, since the decision in the case was made by commissioners who had not attended the hearing: *Hasselblad (GB) Ltd v Orbinson* [1985] QB 475, [1985] 1 All ER 173, CA. See also *Rio Tinto Zinc Corp v Westinghouse Electric Corp* [1978] AC 547 at 612, [1978] 1 All ER 434 at 444-445, HL, per Lord Wilberforce; *Heintz van Landewyck Sarl v EC Commission* (joined Cases 209-215, 218/78) [1981] 3 CMLR 134, ECJ; *Musique Diffusion Française SA v EC Commission* (joined Cases 100-103/80) [1983] ECR 1825, [1983] 3 CMLR 221 at 315, ECJ; *Jones v Department of Employment* [1989] QB 1, [1988] 1 All ER 725, CA; *Welsh v Chief Constable of Merseyside Police* [1993] 1 All ER 692. See further para 199 ante; and the cases cited in notes 4-5 infra. As to whether a tribunal is a court for the purposes of the law of contempt see *A-G v British Broadcasting Corp* [1981] AC 303, [1980] 3 All ER 161, HL (local valuation court not a court for the purposes of the law of contempt); *Pickering v Liverpool Daily Post & Echo Newspapers plc* [1991] 2 AC 370, [1991] 1 All ER 622, HL (overruling *A-G v Associated Newspaper Group plc* [1989] 1 All ER 604, [1989] 1 WLR 322, DC) (mental health review tribunal a court for this purpose); *Peach Grey & Co v Sommers* [1995] ICR 549, DC (employment tribunal).

2 A magistrate is entitled to immunity only so far as he acts judicially, not in the exercise of other administrative discretion: *Royal Aquarium and Summer and Winter Garden Society v Parkinson* [1892] 1 QB 431 at 453, CA, per Lopes LJ. See also para 201 post. Justices of the peace when acting administratively are not a magistrates' court: see MAGISTRATES vol 29(2) (Reissue) para 534 et seq. It is probable that the duties of returning officers at elections are not judicial in this sense: *Cullen v Morris* (1819) 2 Stark 577; *Barnardiston v Soames* (1676) 6 State Tr 1063 at 1096; *Ashby v White* (1703) 1 Salk 19; see also ELECTIONS AND REFERENDUMS vol 15(4) (2007 Reissue) para 740.

3 See *Ferguson v Earl of Kinnoull* (1842) 9 Cl & Fin 251 at 296, HL, per Lord Brougham and at 312 per Lord Campbell.

4 *Ferguson v Earl of Kinnoull* (1842) 9 Cl & Fin 251 at 312, HL (refusal by a presbytery of the Church of Scotland to 'take the trials' of a presentee to a parish); and see *Green v Buccleuchurche Hundred* (1589) 1 Leon 323; *Anon* (1669) 1 Vent 41; *Stirling v Turner* (undated) cited in 9 Cl & Fin at 280; *R v Archbishop of Canterbury and Bishop of London* (1812) 15 East 117; *White v Hislop* (1838) 4 M & W 73; *Ward v Freeman* (1852) 2 ICLR 460, Ex Ch.

5 *Hardy v North Riding Justices and Yeoman* (1886) 50 JP 663; and see *Bradley v Carr* (1841) 3 Man & G 221. The issue of a warrant of arrest (*Taaffe v Downes* (1813) 3 Moo PCC 36n), or a warrant in execution (*Tinsley v Nassau* (1827) Mood & M 52), is a judicial act for this purpose. See also *R v Waltham Forest Justices, ex p Solanke* [1986] QB 983, [1986] 2 All ER 981, CA.

6 *Metcalfe v Hodgson* (1623) Hut 120; *Linford v Fitzroy* (1849) 13 QB 240 at 247 per Lord Denman CJ.

UPDATE

200 Protected proceedings

NOTE 1--Proceedings before a police disciplinary hearing may be judicial proceedings: *Heath v Metropolitan Police Comr* [2004] EWCA Civ 943, [2005] ICR 329; *Lake v British Transport Police* [2007] EWCA Civ 424, [2007] ICR 1293.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(2) PROTECTION/(i) Judicial Privilege/201. Nature of protection.

201. Nature of protection.

Wherever protection of the exercise of judicial powers applies, it does not matter that the judge¹ was under some gross error or ignorance, or was actuated by envy, hatred and malice².

The protection applies provided the judge acts in the bona fide exercise of his office and in the belief (though mistaken) that he has jurisdiction³.

The rule applies differently to superior⁴ and inferior courts. A superior court is protected even though the judge has exceeded his jurisdiction⁵, so long as he has acted judicially⁶. An inferior court, such as a magistrates' court, which exceeds its jurisdiction⁷ is not protected⁸, unless the exercise of jurisdiction was caused by an error of fact in circumstances where the court had no knowledge of or means of knowing the relevant facts⁹.

A court which has jurisdiction is protected even where it proceeds irregularly within that jurisdiction¹⁰.

1 Quaere whether at common law, magistrates are not protected, even if they act within their jurisdiction, if they act maliciously, and without reasonable or probable cause. See *Re McC* [1985] AC 528, [1984] 3 All ER 908, HL; *Law v Llewellyn* [1906] 1 KB 487, CA; Justices of the Peace Act 1997 s 51 (prospectively amended) (but see *Re McC* supra at 541 and 916 per Lord Bridge of Harwich (Lord Elwyn-Jones concurring), and at 559 and 929 obiter per Lord Templeman (cause of action against a magistrate acting maliciously within his jurisdiction is obsolete or obsolescent)). See further *R v Manchester City Magistrates' Court, ex p Davies* [1988] 1 All ER 930, [1988] 1 WLR 667; affd [1989] 1 All ER 90, [1988] 3 WLR 1357, CA. See also note 9 infra; and MAGISTRATES vol 29(2) (Reissue) para 565 et seq.

2 *Sirros v Moore* [1975] QB 118 at 132, [1974] 3 All ER 776 at 782, CA, per Lord Denning MR. See also *Hamilton v Anderson* (1858) 3 Macq 363 at 378, HL; *Fray v Blackburn* (1863) 3 B & S 576; *Scott v Stansfield* (1868) LR 3 Exch 220; *Munster v Lamb* (1883) 11 QBD 588, CA; *Anderson v Gorrie* [1895] 1 QB 668, CA; *Re McC* [1985] AC 528, [1984] 3 All ER 908, HL.

3 Ie he has acted judicially. See *Gwinne v Poole* (1692) 2 Lut 935, App 1560; *Calder v Halket* (1840) 3 Moo PCC 28; *Sirros v Moore* [1975] 1 QB 118, [1974] 3 All ER 776, CA; *Re McC* [1985] AC 528 at 540, [1984] 3 All ER 908 at 916, HL, per Lord Bridge of Harwich.

4 A superior court is a court whose jurisdiction is not limited either by person, place or subject matter: *Gwinne v Poole* (1692) 2 Lut 935, App 1560; *Sirros v Moore* [1975] 1 QB 118, [1974] 3 All ER 776, CA. The High Court and Court of Appeal are superior courts of record: see *Sirros v Moore* supra. The coroner's court is an inferior court of record: *R v West Yorkshire Coroner, ex p Smith (No 2)* [1985] QB 1096, [1985] 1 All ER 100, DC. Quaere whether the Crown Court is, for all purposes, a superior court: see *Sirros v Moore* supra per Lord Denning MR and Ormrod LJ (Crown Court superior court for all purposes), and per Buckley LJ (Crown Court inferior court in certain circumstances). See further *A-G v British Broadcasting Corp* [1981] AC 303, [1980] 3 All ER 161, HL (local valuation court not an inferior court); *Pickering v Liverpool Daily Post & Echo Newspapers plc* [1991] 2 AC 370, [1991] 1 All ER 622, HL (mental health review tribunal a court); and para 199 ante. See also the Supreme Court Act 1981 s 45(1); and COURTS vol 10 (Reissue) paras 309, 621.

5 *Hamond v Howell* (1674) 1 Mod Rep 184, and subsequent proceedings (1677) 2 Mod Rep 218 at 220-221; *Miller v Seare* (1777) 2 Wm Bl 1141 at 1145; *Taaffe v Downes* (1813) 3 Moo PCC 36n; *Fray v Blackburn* (1863) 3 B & S 576; *Polley v Fordham* (1904) 68 JP 504, DC; *Sirros v Moore* [1975] QB 118, [1974] 3 All ER 776, CA; *Re McC* [1985] AC 528, [1984] 3 All ER 908, HL (but see *Anderson v Gorrie* [1895] 1 QB 668, CA; and *Sirros v Moore* supra at 139 and 786-787 per Buckley LJ (impossible for the High Court to exceed its jurisdiction)). There is no reported case of a successful action for damages against a judge of a superior court in relation to acts which took place when he was acting judicially: *Sirros v Moore* supra at 141 and 789 per Buckley LJ.

6 See note 3 supra.

7 For circumstances in which a court acts in excess of its jurisdiction see *Re McC* [1985] AC 528 at 542-550, [1984] 3 All ER 908 at 917-922, HL, per Lord Bridge of Harwich; and *R v Manchester City Magistrates' Court, ex p Davies* [1989] 1 All ER 90 at 96-97, [1988] 3 WLR 1357 at 1365, CA, per Neill LJ. See further *Groome v Forester* (1816) 5 M & S 314; *Houlden v Smith* (1850) 14 QB 841; *Willis v McLachlan* (1876) 1 ExD 376, CA; *Johnston v Meldon* (1891) 30 LR Ir 15; *R v Cockshott* [1898] 1 QB 582, DC; *McCreadie v Thomson* 1907 SC 1176; *O'Connor v Isaacs* [1956] 2 QB 288, CA; *R v McGinlay* (1975) 62 Cr App Rep 156, CA. See further para 76 ante.

8 See eg *Holden v Smith* (1850) 14 QB 841; *Willis v McLachlan* (1876) 1 ExD 376, CA; *Re McC* [1985] AC 528, [1984] 3 All ER 908, HL. The basis for the distinction between superior and inferior courts was questioned by the House of Lords in *Re McC* supra; see eg at 541 and 916 per Lord Bridge of Harwich (liability of magistrates for acts outside their jurisdiction 'a ludicrous anachronism'). However, their lordships declined to adopt the reasoning of Lord Denning MR and Ormrod LJ in *Sirros v Moore* [1975] QB 118, [1974] 3 All ER 776, CA, that the distinction no longer existed, in the absence of statutory abolition.

9 See *Calder v Halket* (1840) 3 Moo PCC 28; *Palmer v Crone* [1927] 1 KB 804; *Sammy-Joe v GPO Mount Pleasant Office* [1966] 3 All ER 924, [1967] 1 WLR 370; *Sirros v Moore* [1975] QB 118, [1974] 3 All ER 776, CA; *R v Manchester City Magistrates' Court, ex p Davies* [1989] 1 All ER 90 at 100, [1988] 3 WLR 1357 at 1367, CA, per Neill LJ, differing from *R v Waltham Forest Justices, ex p Solanke* [1986] QB 479, [1985] 3 All ER 727 (aff'd [1986] QB 983, [1986] 2 All ER 981, CA). See also para 76 ante.

10 *Marshalsea Case* (1612) 10 Co Rep 68b; *Massey v Johnson* (1809) 12 East 67; *Ackerley v Parkinson* (1815) 3 M & S 411 (commented on in *Brittain v Kinnaird* (1819) 1 Brod & Bing 432 at 440 per Park J); *Ratt v Parkinson* (1851) 20 LJMC 208; *Bott v Ackroyd* (1859) 5 Jur NS 1053. See further the cases cited in note 7 supra.

UPDATE

201 Nature of protection

NOTE 1--Justices of the Peace Act 1997 repealed: Courts Act 2003 s 6(4), Sch 10.

NOTE 4--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(2) PROTECTION/(i) Judicial Privilege/202. Extent of protection.

202. Extent of protection.

The protection¹ does not extend to acts purely extra-judicial or alien to the judicial duty of the defendant²; and, therefore, if the words complained of are not uttered in the course of judicial proceedings, the defendant is not protected³.

The protection extends to all judges, juries, advocates, parties and witnesses⁴, for words spoken or written in the course of a judicial inquiry and having any reference thereto⁵, however remote⁶. The protection would not be destroyed by such irrelevancy as would entitle a party to have the words complained of struck out from an affidavit as prolix, impertinent and scandalous⁷. A report of an interruption made during judicial proceedings may be privileged⁸.

1 See para 201 ante.

2 See *Floyd v Barker* (1607) 12 Co Rep 23 at 24. For an example of the prosecution of a judge for a political libel written by him in a purely extra-judicial pamphlet see *Mr Justice Johnson's Case* (1805) 29 State Tr 81. See also *O'Connor v State of South Australia* (1976) 14 SASR 187, 5 Aust SC. See also LIBEL AND SLANDER vol 28 (Reissue) para 98.

3 See *Paris v Levy* (1860) 9 CBNS 342 at 363 per Byles J (where a magistrate, after the close of public business, drew the attention of a newspaper reporter to an objectionable advertisement). See also notes 5-7 infra.

4 In the case of a witness, protection extends to the preparation of his proof: *Watson v M'Ewan, Watson v Jones* [1905] AC 480, HL; see also *More v Weaver* [1928] 2 KB 520, CA; and CIVIL PROCEDURE. The protection extends to the observations of an official receiver in the performance of his duties: see *Burr v Smith* [1909] 2 KB 306, CA. See also *Welsh v Chief Constable of Merseyside Police* [1993] 1 All ER 692 (Crown Prosecution Service lawyer providing information as to offences taken into consideration in the Crown Court not protected because fulfilling a simply administrative function).

5 *Munster v Lamb* (1883) 11 QBD 588, CA; *Scott v Stansfield* (1868) LR 3 Exch 220; *Seaman v Nethercliff* (1876) 2 CPD 53, CA; *Law v Llewellyn* [1906] 1 KB 487, CA; *Hasselblad (GB) Ltd v Orbinson* [1985] QB 475, [1985] 1 All ER 173, CA.

6 'The only sound rule is to grant that protection, unless it can be demonstrated--that is, shown so clearly that no man of ordinary intelligence and judgment could honestly dispute it--that the words used had no connection with the case in hand': *Primrose v Waterston* (1902) 4 F 783 at 793, Ct of Sess, per Lord Moncrieff.

7 *Kennedy v Hilliard* (1859) 10 ICLR 195, where all the cases as to irrelevancy are reviewed and considered by Pigot CB, in an exhaustive judgment approved in *Seaman v Netherclift* (1876) 1 CPD 540 at 546 by Lord Coleridge CJ, and in *Munster v Lamb* (1883) 11 QBD 588 at 604, CA, by Brett MR. The cases considered in *Kennedy v Hilliard* supra are *Lord Beauchampe v Croft* (1497) Keil 26; *Stanley v Coursep* (1560) cited in argument in *Cro Eliz* at 248; *Chamberlaines Case* (1565) cited in argument in *Palm* at 145; *Cutler v Dixon* (1585) 4 Co Rep 14b; *Buckley v Wood* (1591) 4 Co Rep 14b; *Brode's Case* (1595) cited in *Palm* at 144; *Dampport v Sympton* (1596) *Cro Eliz* 520; *Anfield v Feverhill* (1614) 2 Bulst 269; *Weston v Dobniet* (1617) *Cro Jac* 432; *Eyres v Sedgewicke* (1620) *Cro Jac* 601; *Hunter v Allen* (1621) *Palm* 188; *Ram v Lamley* (1632) *Hut* 113; *Boulton v Clapham* (1639) *W Jo* 431; *Lake v King* (1670) 1 Saund 131; *Astley v Younge* (1759) 2 Burr 807; *R v Skinner* (1772) *Lofft* 54; *Maloney v Bartley* (1812) 3 Camp 210; *Trotman v Dunn* (1815) 4 Camp 211; *Hodgson v Scarlett* (1818) 1 B & Ald 232; *Gildea v Brien* (1821) cited in 10 ICLR at 217; *Fairman v Ives* (1822) 5 B & Ald 624; *Revis v Smith* (1856) 18 CB 126; see also *Higginson v O'Flaherty* (1855) 4 ICLR 125; *Munster v Lamb* supra (where the contrary dictum in *Kendillon v Maltby* (1842) *Car & M* 402 at 409 per Lord Denman CJ is disapproved).

8 *Farmer v Hyde* [1937] 1 KB 728, [1937] 1 All ER 773, CA. See further LIBEL AND SLANDER vol 28 (Reissue) para 127.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(2) PROTECTION/(i) Judicial Privilege/203. Exception to privilege in relation to habeas corpus.

203. Exception to privilege in relation to habeas corpus.

By the Habeas Corpus Act 1679, a judge of the High Court who unlawfully denies the writ to a prisoner in vacation time is liable to forfeit to him a sum of £500¹.

1 Habeas Corpus Act 1679 s 9 (amended by the Statute Law Revision Act 1888). This provision seems to apply to every case of unlawful refusal of the writ. See further *Cobbett v Lord Truro* (1853) 20 LTOS 240 at 258; and para 207 et seq post.

UPDATE

203 Exception to privilege in relation to habeas corpus

TEXT AND NOTE 1--Habeas Corpus Act 1679 s 9 further amended: Constitutional Reform Act 2005 Sch 4 para 5.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(2) PROTECTION/(ii) Quasi-judicial Functions/204. Protection afforded.

(ii) Quasi-judicial Functions

204. Protection afforded.

Besides judicial persons and bodies strictly so called, there are many other persons and bodies who have authority or discretion to decide upon matters affecting other persons such as licensing justices¹, local authorities hearing applications for music and dancing licences²,

justices hearing applications for cinematograph licences³, a commissioner holding an inquiry under the Canadian Combines Investigation Act 1927⁴, an Australian board reviewing the decisions of the Commissioner of Taxation⁵, an inspector appointed by the Industrial Assurance Commissioner⁶, an inspector appointed under the Companies Act 1985⁷, the General Medical Council⁸, a valuation appeal tribunal constituted under a wool marketing scheme⁹, and arbitrators appointed in references by consent out of court¹⁰. Persons exercising such quasi-judicial powers, and all parties, advocates, and witnesses before them¹¹, in the absence of fraud, collusion, or malice¹², are not liable to any civil action at the suit of any person aggrieved by their decisions or by words used in the course of the proceedings¹³.

1 *Boulter v Kent Justices* [1897] AC 556, HL; *Attwood v Chapman* [1914] 3 KB 275. As to the protection of magistrates generally see para 200 note 2 ante; and MAGISTRATES.

2 *Royal Aquarium and Summer and Winter Garden Society v Parkinson* [1892] 1 QB 431, CA.

3 *Huish v Liverpool Justices* [1914] 1 KB 109, DC; and see *R v Bird, etc, ex p Jones* (1898) 62 JP 309, DC.

4 *O'Connor v Waldron* [1935] AC 76, PC.

5 *Shell Co of Australia Ltd v Federal Taxation Comr* [1931] AC 275, PC.

6 See the Industrial Assurance Act 1923 s 17(1) (substituted by the Friendly Societies Act 1992 s 100, Sch 19 para 6); *Hearts of Oak Assurance Co Ltd v A-G* [1932] AC 392, HL; and INDUSTRIAL ASSURANCE vol 24 (Reissue) para 301.

7 See the Companies Act 1985 ss 431, 432 (as amended); and *Re Grosvenor and West End Railway Terminus Hotel Co Ltd* (1897) 76 LT 337, CA. See generally COMPANIES vol 15 (2009) PARAS 1541-1542.

8 *Allbutt v General Council of Medical Education* (1889) 23 QBD 400, CA; *Partridge v General Council of Medical Education and Registration of the United Kingdom* (1890) 25 QBD 90, CA; *General Medical Council v British Broadcasting Corp* [1998] 3 All ER 426, [1998] 1 WLR 1573, CA; and see MEDICAL PROFESSIONS vol 30(1) (Reissue) para 13 et seq.

9 *Barrs v British Wool Marketing Board* 1957 SC 72.

10 See ARBITRATION vol 2 (2008) PARA 1226 et seq. It is submitted that in references under order of the court, or under Act of Parliament, the arbitrator enjoys full judicial immunity, in the same way as members of a commission issued by a bishop under statute: see *Barratt v Kearns* [1905] 1 KB 504, CA. As to club committees see *Hope v l'Anson and Weatherby* (1901) 18 TLR 201, CA; *Chapman v Lord Ellesmere* [1932] 2 KB 431, CA; followed in *Russell v Duke of Norfolk* [1949] 1 All ER 109, CA.

11 Parties, witnesses and advocates are protected by the law of qualified privilege: see *Attwood v Chapman* [1914] 3 KB 275; *Collins v Henry Whiteway & Co Ltd* [1927] 2 KB 378. See also the Witnesses (Public Inquiries) Protection Act 1892; the Criminal Law Act 1977 s 15(3)(d) (repealed), s 65(5), Sch 13; and CIVIL PROCEDURE; LIBEL AND SLANDER vol 28 (Reissue) para 109 et seq.

12 *Royal Aquarium and Summer and Winter Garden Society v Parkinson* [1892] 1 QB 431, CA; *O'Connor v Waldron* [1935] AC 76, PC; see also *Wills v Maccarmick* (1763) 2 Wils 148 at 149; *Cullen v Morris* (1819) 2 Stark 577 at 587 per Abbott CJ; *Ludbrook v Barrett* (1877) 46 LQB 798 at 800 per Grove J; *Stevenson v Watson* (1879) 4 CPD 148 at 161 per Denman J; *Tullis v Jacson* [1892] 3 Ch 441 at 446 per Chitty J.

13 *Pappa v Rose* (1871) LR 7 CP 32 (affd LR 7 CP 525, Ex Ch); *Stevenson v Watson* (1879) 4 CPD 148; *Partridge v General Council of Medical Education and Registration of the United Kingdom* (1890) 25 QBD 90, CA; *Sutcliffe v Thackrah* [1974] AC 727, [1974] 1 All ER 859, HL; *Arenson v Casson Beckman Rutley & Co* [1977] AC 405, [1975] 3 All ER 901, HL; *Campbell v Edwards* [1976] 1 All ER 785, [1976] 1 WLR 403, CA; and see the cases cited in note 12 supra and para 205 post. It has been said that, after the setting aside of an award for fraud, the arbitrator could be sued for the return of his fees as upon a total failure of consideration: see *Re Hall and Hinds* (1841) 2 Man & G 847 at 853.

UPDATE

204 Protection afforded

NOTE 6--1923 Act repealed: Financial Markets and Services Act 2000 ss 416(1)(a), 432(3), Sch 22.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(2) PROTECTION/(ii) Quasi-judicial Functions/205. Persons protected.

205. Persons protected.

Protection¹ extends also to arbitrators and quasi arbitrators in the sense of persons who are not arbitrators under the Arbitration Act 1996² but who nevertheless act in a judicial capacity³; but persons employed to supervise work and give certificates⁴, or to make a valuation at the request of one or both parties⁵ may be liable for negligence. The onus of proof is on the party claiming the immunity to establish it⁶.

In the absence of malice⁷, domestic tribunals are not usually liable for damages caused by their acts even where these are ultra vires, nor can damages be awarded against them where there is no contractual relationship between the tribunal and the persons injured⁸.

1 See para 204 ante.

2 See generally ARBITRATION.

3 *Sutcliffe v Thackrah* [1974] AC 727, [1974] 1 All ER 859, HL; *Arenson v Casson Beckman Rutley & Co* [1977] AC 405, [1975] 3 All ER 901, HL (but cf at 431 and 908 per Lord Kilbrandon and 440 and 925 per Lord Salmon). A person acts in a judicial capacity if he decides a dispute; it is not sufficient that he answers a question: *Arenson v Casson Beckman Rutley & Co* supra at 423 and 911 per Lord Simon of Glaisdale. See also *Sutcliffe v Thackrah* supra at 735 and 861-862 per Lord Reid and at 754 and 878 per Viscount Dilhorne; cf at 759 and 882 per Lord Salmon; and *Arenson v Casson Beckman Rutley & Co* supra at 426 and 913-914 per Lord Wheatley (a person acts judicially if a dispute exists, the person hears evidence and contentions of the parties if appropriate, and reaches a decision); *Re Hopper* (1867) LR 2 QB 367 at 373.

4 *Sutcliffe v Thackrah* [1974] AC 727, [1974] 1 All ER 859, HL.

5 See eg *Jenkins v Betham* (1855) 15 CB 168; *Turner v Goulden* (1873) LR 9 CP 57; *Arenson v Casson Beckman Rutley & Co* [1977] AC 405, [1975] 3 All ER 901, HL (expert valuation of shares by mutual consent of parties); *Campbell v Edwards* [1976] 1 All ER 785, [1976] 1 WLR 403, CA (valuation of proper price for surrender of a lease at request of both parties); *Yianni v Edwin Evans & Sons* [1982] QB 438, [1981] 3 All ER 592 (valuation report on property).

6 *Sutcliffe v Thackrah* [1974] AC 727 at 738, [1974] 1 All ER 859 at 864-865, HL, per Lord Reid; *Arenson v Casson Beckman Rutley & Co* [1977] AC 405 at 426, [1975] 3 All ER 901 at 913-914, HL, per Lord Wheatley.

7 As to actions in tort for deliberate abuse of office or authority see para 188 ante.

8 See *Abbott v Sullivan* [1952] 1 KB 189, [1952] 1 All ER 226, CA; *Byrne v Kinematograph Renters Society Ltd* [1958] 2 All ER 579, [1958] 1 WLR 762; *Davis v Carew-Pole* [1956] 2 All ER 524, [1956] 1 WLR 833. See, however, *Breen v Amalgamated Engineering Union* [1971] 2 QB 175 at 193, [1971] 1 All ER 1148 at 1156, CA, obiter per Lord Denning MR dissenting (damages may be awarded for wrongful deprivation of office by trade union committee). See further COURTS.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/5. LIABILITY AND PROTECTION/(2) PROTECTION/(iii) Acts pursuant to Judicial Orders/206. Writs and warrants.

(iii) Acts pursuant to Judicial Orders

206. Writs and warrants.

Where a purely ministerial officer is required by law to obey decrees of a court of justice, as a general rule¹, no liability can attach to him for any act done in obedience to such decrees²; but to obtain this protection he must prove strict obedience to the terms of a writ or warrant³ valid upon the face thereof at the time the action was taken⁴, and, in the case of an officer of an inferior court, that the court had general jurisdiction over the case in which the writ or warrant was issued⁵. The general jurisdiction may be apparent upon the face of the proceedings. The party who avails himself of execution under the judgment of an inferior court is bound to show the validity of such judgment in his defence, but the officer need only plead the writ under which he acted⁶. In the case of an officer of a superior court, it is presumed that the writs issued by such court are duly issued⁷; and all writs not appearing to be outside the court's jurisdiction⁸ afford a protection to its officers although on their face irregular⁹ or void in form¹⁰, for officers ought not to examine the judicial act of the court whose servants they are, but are bound to execute it and are therefore protected by it¹¹.

1 For statutory modification of this rule see the Constables Protection Act 1750; and POLICE vol 36(1) (2007 Reissue) para 523.

2 See *B (Dean and Chapter) v J* (1352) YB 26 Edw 3, fo 16, pl 7 ('what an officer doeth by the warrant of a court cannot be against the peace'); *Henderson v Preston* (1888) 21 QBD 362, CA; *Sirros v Moore* [1975] QB 118 at 137, [1974] 3 All ER 776 at 785, CA, per Lord Denning MR; and see the cases cited in notes 3-4 infra.

3 *Entick v Carrington* (1765) 19 State Tr 1029 at 1063; *Money v Leach* (1765) 3 Burr 1742; *Cooper v Booth* (1785) 3 Esp 135; *Munday v Stubbs* (1850) 10 CB 432. Thus, a sheriff is liable for taking the goods of B under a warrant to take those of A, however innocently he may act: *Balme v Hutton* (1833) 9 Bing 471, Ex Ch, overruling *Bayly v Bunning* (1666) 1 Lev 173, and *Glasspoole v Young* (1829) 9 B & C 696. Although the sheriff may be justified by estoppel if the other person intentionally deceives him, such estoppel only endures so long as he is ignorant of the true facts (*Dunston v Paterson* (1857) 2 CBNS 495), and he will be liable if he exceeds his powers under the warrant (*Wright v Court* (1825) 4 B & C 596). See also ESTOPPEL vol 16(2) (Reissue) para 1072; SHERIFFS vol 42 (Reissue) para 1133.

4 *Andrews v Marris* (1841) 1 QB 3; *Dews v Riley* (1851) 11 CB 434; 2 Roll Abr, Trespass (O) 552, pl 10; *Brown v Copley* (1844) 8 Scott NR 350; *Morse v James* (1738) Willes 122 (where an inferior court held on 24 February issued a precept dated 26); *Charleton v Alway* (1840) 11 Ad & El 993; *Carratt v Morley* (1841) 1 QB 18; *Humphries v Longmore* (1848) 6 CB 363; *Clark v Woods* (1848) 2 Exch 395. An officer having several warrants may justify under one which is valid, although at the time of acting he produced another which was void: *Bristol Governors of the Poor v Wait* (1834) 1 Ad & El 264. As to wrongful and irregular execution see CIVIL PROCEDURE vol 12 (2009) PARA 1375 et seq.

5 *London Corpn v Cox* (1867) LR 2 HL 239.

6 *Moravia v Sloper* (1737) Willes 30; *Turner v Felgate* (1663) 1 Lev 95; *Higginson v Martin and Hadley* (1677) 2 Mod Rep 195; *Cotes v Michill* (1681) 3 Lev 20; *Hodson v Cooke* (1683) 1 Vent 369; *Gwinne v Poole* (1692) 2 Lut 935, App 1560; *Truscott v Carpenter and Man* (1697) 1 Ld Raym 229; *Barrow v Dorchett* (1735) (unreported), referred to in *Moravia v Sloper* supra at 34 per Willes CJ; and see *Speers v Dagers* (1885) Cab & El 503 (where it was held that officers are not protected (being treated as parties) in the case of process executed under an interpleader order made without jurisdiction, although good on the face of it, if such order was obtained on their own application). The effect of this rule is that the officer is not liable for a defect in jurisdiction in the particular case, unless it appears upon the warrant, but that he is liable for lack of what has been termed 'any pretence of jurisdiction' (*Shergold v Holloway* (1734) 2 Stra 1002), for such defect must appear upon the writ. For cases in which officers have been held liable see *Shergold v Holloway* supra; *Nichols v Walker and Carter* (1635) Cro Car 394; *Milward v Caffin* (1779) 2 Wm Bl 1330; and see *Morse v James* (1738) Willes 122; *Charleton v Alway* (1840) 11 Ad & El 993; *Humphries v Longmore* (1848) 6 CB 363; *Clark v Woods* (1848) 2 Exch 395. For cases in which officers have been held to be protected although the judgments upon which process issued were void see *Olliet v Bessey* (1679) T Jo 214; *Higginson v Martin and Hadley* (1677) 2 Mod Rep 195; *Hill v Bateman* (1726) 2 Stra 710; *Wilson v Weller* (1819) 1 Brod & Bing 57.

7 *Howard v Gosset* (1845) 10 QB 359 at 453, Ex Ch, per Parke B.

8 *Howard v Gosset* (1845) 10 QB 359 at 453, Ex Ch, per Parke B. This exception would seem to cover a writ of a superior court, which was clearly outside its jurisdiction.

9 *Countess of Rutland's Case* (1606) 6 Co Rep 52b at 54a.

10 *Parsons v Loyd* (1772) 3 Wils 341 at 345 per De Grey CJ (where the officer was said to be protected by a writ of *capias ad respondendum* (see para 250 post), although void for being tested in Trinity and returnable in Hilary Term); cf *Humphries v Longmore* (1848) 6 CB 363.

11 *Howard v Gosset* (1845) 10 QB 359 at 411, Ex Ch; and see *Turner v Felgate* (1663) 1 Lev 95; *Cotes v Michill* (1681) 3 Lev 20; *Tarlton v Fisher* (1781) 2 Doug KB 671. See further POLICE vol 36(1) (2007 Reissue) para 523.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(1) THE WRIT OF HABEAS CORPUS AD SUBJICIENDUM/(i) Nature and Scope of the Writ/207. General nature of writ of habeas corpus.

6. HABEAS CORPUS

(1) THE WRIT OF HABEAS CORPUS AD SUBJICIENDUM

(i) Nature and Scope of the Writ

207. General nature of writ of habeas corpus.

The writ of habeas corpus ad subjiciendum¹, commonly known as the writ of habeas corpus, is a prerogative process for securing the liberty of the subject² by affording an effective means of immediate release from unlawful or unjustifiable detention³ whether in prison or in private custody⁴. It is a prerogative writ by which the Sovereign has a right to inquire into the causes for which any of her subjects are deprived of their liberty⁵. By it the High Court and the judges of that court, at the instance of a subject aggrieved, command the production of that subject⁶, and inquire into the cause of his imprisonment⁷. If there is no legal justification for the detention, the party is ordered to be released⁸. Release on habeas corpus is not, however, an acquittal⁹, nor may the writ be used as a means of appeal¹⁰.

1 Several other writs of habeas corpus are known to the common law. These are the writs of habeas corpus ad testificandum, habeas corpus ad respondendum, habeas corpus ad deliberandum, habeas corpus ad satisfaciendum, habeas corpus ad prosequendum and habeas corpus ad faciendum et recipiendum, frequently known as habeas corpus cum causa. Their general object is to secure the production of an individual before a court or judge for various purposes, as the names of the writs indicate. All save the first two are in practice obsolete. See further para 250 post.

2 The remedy obtainable by the writ of habeas corpus is not confined to British subjects: see para 209 post. As regards members of visiting forces see the Visiting Forces Act 1952 ss 2, 3 (both as amended); and ARMED FORCES vol 2(2) (Reissue) paras 143-144.

3 As to the meaning of 'detention' see *R v Bournemouth Community and Mental Health NHS Trust, ex p L* [1999] 1 AC 458, [1998] 3 All ER 289, HL.

4 *R v Earl Ferrers* (1758) 1 Burr 631. 'The provisions made by the law for the liberty of the subject have been found for ages effectual to an extent never known in any other country through the medium of the summary right to the writ of habeas corpus': *R v Batchelder* (1839) 1 Per & Dav 516 at 567 per Lord Denman CJ. See also *Cox v Hakes* (1890) 15 App Cas 506, HL; *Barnardo v Ford, Gossage's Case* [1892] AC 326, HL; *Secretary of State for Home Affairs v O'Brien* [1923] AC 603 at 609, HL; *Zabrovsky v General Officer Commanding Palestine* [1947] AC 246, PC.

5 See *Crowley's Case* (1818) 2 Swan 1 at 48 per Lord Eldon LC; *R v Cowle* (1759) 2 Burr 834 at 856 per Lord Mansfield CJ; Corner's Crown Practice 110. 'If any man be imprisoned by another a corpus cum causa (ie habeas corpus) can be granted to those who imprison him, for the King ought to have an account rendered to him concerning the liberty of his subjects, and the restraint thereof': 2 Roll Abr 69.

6 The writ does not require the production of a person whom the respondent claims in a return, good and valid on its face, never to have been at any time detained, confined or restrained by him or in his custody and which return may be shown to be truthful on examination by the court: *Re Quigley* [1983] NI 245, NI HC.

7 See Wilm 88. The writ may not issue from an English court to any colony where there is a court which can issue it, but that rule does not apply to a protectorate: see para 215 post; and COMMONWEALTH vol 13 (2009) PARA 708.

8 The writ of habeas corpus is available where the fact of detention (rather than the legality of detention) is in dispute: *Re Quigley* [1983] NI 245, NI HC; [1983] NI 238, NI CA.

9 *R v Officer Commanding Depot Battalion, RASC Colchester, ex p Elliott* [1949] 1 All ER 373 at 379, DC, per Lord Goddard CJ.

10 *Ex p Corke* [1954] 2 All ER 440, [1954] 1 WLR 899, DC; and see *Ex p Hinds* [1961] 1 All ER 707, [1961] 1 WLR 325, DC.

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208. General scope of the writ.

The writ is available as a remedy in all cases of wrongful deprivation of personal liberty¹. The illegal detention of a subject, that is a detention or imprisonment which is incapable of legal justification, is the basis of jurisdiction in habeas corpus².

Where the detention of an individual is under process for criminal or supposed criminal causes³, the jurisdiction of the court and the regularity of the commitment may be inquired into⁴.

Where the restraint is imposed on civil grounds under claim of authority, the legal validity of that claim may be investigated and determined⁵, and where, as frequently occurs in the case of minors, conflicting claims for the custody of the same individual are raised, those claims may be inquired into on the return to a writ of habeas corpus, and the custody awarded to the proper person⁶.

In other cases, where the personal freedom of an individual is wrongfully interfered with by another, the release of the former from the illegal detention may be effected by habeas corpus⁷.

The writ may issue not only to a person who has the actual custody but also to a person who has the constructive custody in the sense of having power and control over the body⁸.

1 'The great and efficacious writ in all manner of illegal confinement is that of habeas corpus ad subjiciendum, directed to the person detaining another, and commanding him to produce the body of the prisoner with the day and cause of his caption and detention, ad faciendum, subjiciendum, et recipiendum, to do, submit to, and receive whatsoever the judge or court awarding such writ shall consider in that behalf': 3 Bl Com (14th Edn) 131.

2 This is apparent from the very wording of the writ, which requires the person to whom it is addressed to have the body of the person named in it who is 'taken and detained under your custody, as is said, together with the day and cause of his being taken and detained, to undergo and receive all and singular such matters and things as the court shall then and there consider of concerning him in this behalf': see *Barnardo v Ford, Gossage's Case* [1892] AC 326 at 329, HL, per Lord Herschell. On the same principle that the object of the writ

of habeas corpus is merely to protect the liberty of the subject, it has been held that the master of an apprentice was not entitled to a writ of habeas corpus for the purpose of regaining the custody of the apprentice who had of his own accord entered the service of another person: *R v Reynolds* (1795) 6 Term Rep 497; *R v Edwards* (1798) 7 Term Rep 745; *Ex p Landsdown* (1804) 5 East 38; *Ex p Gill* (1806) 7 East 376. See also *R v Secretary of State for the Home Department, ex p Mughal* [1973] 1 WLR 1133 at 1136, DC, per Lord Widgery CJ (affd [1974] QB 313, [1973] 3 All ER 796, CA) (applicant voluntarily choosing to remain in custody rather than return to Pakistan when refused entry to the United Kingdom; habeas corpus wrong remedy); *R v Secretary of State for the Home Department, ex p Phansopkar* [1976] QB 606 at 611, [1975] 3 All ER 497 at 501, DC, per Lord Widgery CJ (affd [1976] QB 606, [1975] 3 All ER 497, CA). But see *R v Secretary of State for the Home Department, ex p Parvaz Akhtar* [1981] QB 46, [1980] 2 All ER 735, CA (habeas corpus application of person detained after being refused entry rejected on other grounds).

In *X v United Kingdom* (1981) 4 EHRR 188, the European Court of Human Rights held that the right of a long-term mental patient to apply for a writ of habeas corpus did not, given the limited scope of review undertaken by the court in habeas corpus proceedings, satisfy the United Kingdom's obligation, under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) Cmd 8969) art 5(4) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 127), to permit a person who has been deprived of his liberty to have the lawfulness of his detention decided speedily by a court.

The writ of habeas corpus is available where the fact of detention, rather than the legality of detention is in dispute: *Re Quigley* [1983] NI 128, [1983] NI 238, [1983] NI 245.

3 Although the writ is available as a remedy in all cases of wrongful deprivation of personal liberty, whether criminal or civil, there are important distinctions between applications for the writ in a criminal cause or matter and applications made in a non-criminal cause or matter. As to the distinctions see para 231 post. See also para 247 post. For the meaning of 'criminal cause or matter' see para 247 note 3 post.

4 See para 218 post.

5 See para 213 post.

6 See para 224 post.

7 See para 217 et seq post.

8 *Barnardo v Ford, Gossage's Case* [1892] AC 326, HL; *R v Secretary of State for Home Affairs, ex p O'Brien* [1923] 2 KB 361, CA; and see *Re Mwenya* [1960] 1 QB 241 at 280, [1959] 3 All ER 525 at 542, CA, per Lord Parker CJ in which the nature of constructive custody was discussed.

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209. Writ available against the Executive.

In any matter involving the liberty of the subject the action of the Crown or its ministers or officials is subject to the supervision and control of the judges on habeas corpus¹. The judges owe a duty to safeguard the liberty of the subject not only to the subjects of the Crown, but also to all persons within the realm who are under the protection of the Crown and entitled to resort to the courts to secure any rights which they may have, and this whether they are alien friends or alien enemies². It is this fact which makes the prerogative writ of the highest constitutional importance, it being a remedy available to the lowliest subject against the most powerful³. The writ has frequently been used to test the validity of acts of the Executive and, in particular, to test the legality of detention under emergency legislation⁴. No peer or lord of Parliament has privilege of peerage or Parliament against being compelled to render obedience to a writ of habeas corpus directed to him⁵.

1 If it is clear that an act is done by the Executive with the intention of misusing its powers, the court has jurisdiction to deal with the matter on an application for a writ of habeas corpus, although the custody of the

applicant may be technically legal and the point is not strictly before the court having regard to the form in which the application is made: *R v Governor of Brixton Prison, ex p Sarno* [1916] 2 KB 742.

2 *R v Earl of Crewe, ex p Sekgome* [1910] 2 KB 576 at 620, CA, per Kennedy LJ. See also *Khawaja v Secretary of State for the Home Department* [1984] AC 74 at 111, [1983] 1 All ER 765 at 782, HL, per Lord Scarman. Above the liberty of the subject is the safety of the realm, however, and when the internment of an alien enemy is considered by the Executive desirable in the interests of the safety of the realm, and the government interns such alien enemy, the action of the Executive in so doing is not open to review by the courts by habeas corpus: *R v Vine Street Police Station Superintendent, ex p Liebmann* [1916] 1 KB 268, DC; *R v Bottrill, ex p Kuechenmeister* [1947] KB 41, [1946] 2 All ER 434, CA. As to aliens see BRITISH NATIONALITY AND IMMIGRATION vol 4(2) (2002 Reissue) para 13. As to the internment of alien enemies see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) paras 462, 573 et seq. As to detention for disciplinary offences on board ships of designated states see the Consular Relations Act 1968 s 6; and FOREIGN RELATIONS LAW vol 18(2) (Reissue) para 698.

3 'It is a writ of such a sovereign and transcendent authority that no privilege of person or place can stand against it': Wilm 88. Precedents are cited in *Darnel's Case* (1627) 3 State Tr 1, in which the writ of habeas corpus was used by subjects against the Crown as early as the reign of Henry VII; see also Fry's Report of the Case of the Canadian Prisoners 10. During the Stuart period the writ was frequently used as the constitutional remedy in cases of illegal imprisonment by the Crown or the Executive. In the reign of Charles I, a writ of habeas corpus was granted on motion to test the legality of imprisonment 'by the special command of His Majesty', and on the return in the Court of King's Bench, Hyde CJ said: 'Whether the commitment be by the King or others, this court is a place where the King doth sit in person, and we have power to examine it; and if it appears that any man hath injury or wrong by his imprisonment, we have power to deliver and discharge him; if otherwise he is to be remanded by us to prison again': *Darnel's Case* supra at 4. In *R v Browne, Corbet etc* (1686) 2 Show 484, it was held that a warrant of commitment under the royal sign manual, ie under the King's own hand without seal or under the hand of any secretary or officer of state, was bad, and that the Court of King's Bench would discharge the party on habeas corpus.

The writ of habeas corpus may be used against a corporation, though the application for the writ is better directed against an officer of the corporation: *Re Carroll (an infant)* [1931] 1 KB 317 at 363, CA, per Slessor LJ.

4 The cases are numerous: see eg *R v Cannon Row Police Station Inspector, ex p Brady* (1921) 91 LJKB 98, CA; *R v Secretary of State for Home Affairs, ex p O'Brien* [1923] 2 KB 361, CA (on appeal sub nom *Secretary of State for Home Affairs v O'Brien* [1923] AC 603, HL) (cases in which orders were made by the Home Secretary for the deportation of persons to Ireland for internment there). See also *Re Mwenya* [1960] 1 QB 241, [1959] 3 All ER 525, CA; *Re Keenan* [1972] 1 QB 533, [1971] 3 All ER 883, CA; *Phillip v DPP of Trinidad and Tobago* [1992] 1 AC 545, [1992] 1 All ER 665, PC (arrest after grant of pardon; application for habeas corpus based on pardon). In *R v Governor of Maidstone Prison, ex p Maguire* [1925] 2 KB 265 (on appeal 95 LJKB 55, CA) the court upheld orders made by the Home Secretary and the representatives of the Governor of Northern Ireland for the removal to a prison in England of a person sentenced in Northern Ireland. See also the wartime cases of *R v Vine Street Police Station Superintendent, ex p Liebmann* [1916] 1 KB 268, DC; *R v Commandant of Knockaloe Camp, ex p Forman* (1917) 87 LJKB 43, DC; *R v Halliday* [1917] AC 260, HL; *Ex p Howsin* (1917) 33 TLR 527, CA; *R v Governor of Wormwood Scrubs Prison, ex p Foy* [1920] 2 KB 305; *R v Governor of Brixton Prison, ex p Sarno* [1916] 2 KB 742 (where the Home Secretary made an order that an alien friend should be deported from the United Kingdom); *R v Secretary of State for Home Affairs, ex p Budd* [1942] 2 KB 14, [1942] 1 All ER 373, CA; *Greene v Secretary of State for Home Affairs* [1942] AC 284, [1941] 3 All ER 388, HL; *R v Bottrill, ex p Kuechenmeister* [1947] KB 41, [1946] 2 All ER 434, CA.

The legality of an act of state relating to a foreign territory under the protection of the Crown, but which has never been annexed, cannot be questioned in a court of law: *R v Earl of Crewe, ex p Sekgome* [1910] 2 KB 576, CA. As to acts of state see further FOREIGN RELATIONS LAW vol 18(2) (Reissue) para 613 et seq.

5 See para 246 note 3 post.

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210. Prerogative nature of writ.

The writ of habeas corpus ad subjiciendum, unlike the other writs of habeas corpus, is a prerogative writ, that is to say it is an extraordinary remedy, which is issued upon cause shown in cases where the ordinary legal remedies are inapplicable or inadequate¹.

The writ is a writ of right² and is granted *ex debito justitiae*³. It is not, however, a writ of course. Both at common law and by statute⁴ the writ of habeas corpus may be granted only upon reasonable ground for its issue being shown⁵. Once such ground has been shown, the court has no discretion to refuse the writ⁶. The writ may not in general be refused merely because there exists an alternative remedy by which the validity of the detention can be questioned⁷.

1 *R v Cowle* (1759) 2 Burr 834 at 855 per Lord Mansfield CJ; see also *Crowley's Case* (1818) 2 Swan 1 at 48 per Lord Eldon LC; Corner's Crown Practice 110. As to the prerogative writs see para 118 ante. As to the other writs of habeas corpus see paras 207 note 1 ante, 250 post.

2 *R v Heath* (1744) 18 State Tr 1 at 19 per Marlay CJ. 'Habeas corpus is a writ of right, the highest writ the party can bring': *Bushell's Case* (1670) Vaugh 135 per Hale CJ. 'There is this difference between a habeas corpus ad subjiciendum and any other habeas corpus, that the former is a writ of right against which no privilege of person or place can avail': Bac Abr Habeas Corpus (B) 6; *R v Pell and Offly* (1674) 3 Keb 279. See also *Greene v Secretary of State for Home Affairs* [1942] AC 284 at 302, [1941] 3 All ER 388 at 400, HL, per Lord Wright; *Azam v Secretary of State for the Home Department* [1974] AC 18 at 32, sub nom *R v Governor of Pentonville Prison, ex p Azam* [1973] 2 All ER 741 at 751, CA, per Lord Denning MR.

3 *R v Cowle* (1759) 2 Burr 834 at 855 per Lord Mansfield CJ; *Crowley's Case* (1818) 2 Swan 1 at 48, 61 per Lord Eldon LC; *Hobhouse's Case* (1820) 3 B & Ald 420 at 421 per Abbott CJ; *Ex p Knight* (1836) 2 M & W 106; *Re Newton* (1849) 13 QB 716. 'There is no such thing in law as writs of grace and favour issuing from the judges; they are all writs of right, but they are not all writs of course': Wilm 87.

4 See para 213 post.

5 In answer to a question put by the House of Lords in 1758 whether in cases not within the Habeas Corpus Act 1679 writs of habeas corpus ad subjiciendum by the law as it then stood ought to issue of course upon probable cause verified by affidavit, Wilmott CJ stated that writs of habeas corpus ought not to issue of course, and that a writ which issues on a probable cause verified by affidavit is as much a writ of right as a writ which issues of course (Wilm 81); he also pointed out that writs of habeas corpus on imprisonment for criminal matters were never writs of course, they always issued upon a motion grafted on a copy of the commitment, and cases might be put in which they ought not to be granted (Wilm 88); an early case in which a habeas corpus was refused is cited (1688) in Comb at 74. See also 3 Bl Com (14th Edn) 132; *Anon* (1671) Cart 221, per Vaughan CJ ('habeas corpus is no original writ and if it be in the nature of a judicial writ, there must be a cause for it'); *Hobhouse's Case* (1820) 3 B & Ald 420 at 421 per Abbott CJ; and see para 118 ante. The view expressed by Best J in *Hobhouse's Case* supra at 424, that on an application for a writ of habeas corpus to a judge during vacation under the Habeas Corpus Act 1679 s 9, the writ is grantable as of course, is incorrect: *Hobhouse's Case* supra at 422 per Abbott CJ and at 423 per Holroyd J. As to the burden of proof in habeas corpus cases see para 233 post.

6 *Phillip v DPP of Trinidad and Tobago* [1992] 1 AC 545 at 560, [1992] 1 All ER 665 at 676, PC; although see *R v Governor of Pentonville Prison, ex p Osman (No 3)* [1990] 1 All ER 999 at 1014, [1990] 1 WLR 878 at 894-895, DC, per Parker LJ ('It appears to me to be clear that when a committal order is in itself proper but is attacked upon what is at most a technical flaw in the process of getting the alleged offender before a court, this court can and should refuse the writ').

7 *Azam v Secretary of State for the Home Department* [1974] AC 18 at 32, sub nom *R v Governor of Pentonville Prison, ex p Azam* [1973] 2 All ER 741 at 751, CA, per Lord Denning MR; *R v Secretary of State for the Home Department, ex p Mughal* [1973] 1 WLR 1133 at 1136, DC, per Lord Widgery CJ (affd [1974] QB 313, [1973] 3 All ER 796, CA); *Khawaja v Secretary of State for the Home Department* [1984] AC 74 at 101, [1983] 1 All ER 765 at 775, HL, per Lord Wilberforce and at 123 and 791 per Lord Bridge of Harwich. See also *Phillip v DPP of Trinidad and Tobago* [1992] 1 AC 545 at 560, [1992] 1 All ER 665 at 676, PC ('The appellants are not to be deprived of this fundamental right by the existence of some alternative, but in the circumstances, wholly unsatisfactory remedy'). The court will not, however, allow habeas corpus to be used to impeach the correctness of a decision made by a court of competent jurisdiction where the alternative remedy of an appeal is available: *R v Commanding Officer of Morn Hill Camp, ex p Ferguson* [1917] 1 KB 176 at 179, DC. See also *Ex p Corke* [1954] 2 All ER 440, [1954] 1 WLR 899, DC; *R v Governor of Canterbury Prison, ex p Craig* [1991] 2 QB 195 at 206, [1990] 2 All ER 654 at 659, DC, per Watkins J (the appeal route is the only proper route in the vast majority of cases and it is generally inappropriate to seek instead the jurisdiction of the court; however, this case was exceptional as there were a number of points of pure law of general application needing an authoritative decision); and para 228 post.

UPDATE

210 Prerogative nature of writ

NOTE 5--Habeas Corpus Act 1679 s 9 amended: Constitutional Reform Act 2005 Sch 4 para 5.

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211. Writ remedial, not punitive.

The writ of habeas corpus ad subjiciendum is a writ of a remedial nature and is not to be used as an instrument of punishment of one who has wrongfully detained or parted with the custody of another¹. It is inapplicable if the illegal detention has ceased before the application for the writ is made². When it is clear that the person charged with unlawfully detaining another, whether a child or an adult, has de facto ceased to have any custody or control, the writ ought not to issue³. Where, however, a counterfeited release has taken place, and a pretended ignorance of the place of custody or of the identity of the custodian is insisted on, a court may, and should, inquire into the facts, because the detention is in fact being continued by someone who is really the agent of the original wrongdoer⁴.

1 See Wilm 88; *Brass Crosby's Case* (1771) 3 Wils 188 at 198 per De Grey CJ.

2 *Re Nicola Raine* (1982) Times, 5 May.

3 *Barnardo v Ford, Gossage's Case* [1892] AC 326, HL; *R v Earl of Crewe, ex p Sekgome* [1910] 2 KB 576, CA. When application is initially made for the writ in such a case the court may refuse the application or it may adjourn the application for notices to be served on the person alleged to be detaining and on other persons and for such persons to prepare their evidence. If it is doubtful whether the person charged with the unlawful detention has the custody or control, the court may order the writ to issue in order that the question may be ascertained on the return: *R v Secretary of State for Home Affairs, ex p O'Brien* [1923] 2 KB 361 at 391, CA, per Scrutton LJ. The court has given leave for short notice to be served in order to hear argument from the respondent and to establish whether there is any real substance in the application. If the application is found to be without substance, it may be dismissed; if there is substance, the matter can be further adjourned for evidence to be filed.

4 *Barnardo v Ford, Gossage's Case* [1892] AC 326, HL. If, as was formerly supposed (see *R v Barnardo* (1889) 23 QBD 305 at 315, CA, per Lindley LJ; *R v Barnardo, Gossage's Case* (1890) 24 QBD 283 at 294, CA, per Lord Esher MR; on appeal sub nom *Barnardo v Ford, Gossage's Case* [1892] AC 326, HL), the writ could be issued, notwithstanding the termination of the illegal detention, it would be capable of being used as a convenient process for punishing a gaoler who has connived at the escape of one of the prisoners under his charge. In such a case a legal wrong has been committed, but that wrong is the very reverse of illegal detention, for which alone the writ of habeas corpus was intended as a remedy: see *Barnardo v Ford, Gossage's Case* supra at 334 per Lord Watson. A man who parts with the custody of a child after he is served with a writ of habeas corpus, or who evades service in order that he may get rid of such custody, commits a plain contempt for which he is answerable to the court. In such a case it is doubtful whether it is competent, and it is certainly inexpedient, to enforce the writ of habeas corpus. The case ought rather to be dealt with as one of contempt, and the court has power to pronounce an order which will compel the former custodian to choose between placing himself in a position which will make him liable to the writ and bearing the consequences of his contumacy: see *R v Wigand* [1913] 2 KB 419. On the other hand, where a person absolutely gives up the custody and control of a child from the mere apprehension that by retaining it he may become liable to a writ of habeas corpus and without any notice that such a proceeding will be taken, apparently no contempt has been

committed: *Barnardo v Ford*, *Gossage's Case* supra at 335 per Lord Watson. As to contempt generally see CONTEMPT OF COURT.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(1) THE WRIT OF HABEAS CORPUS AD SUBJICIENDUM/(ii) Jurisdiction/212. Jurisdiction at common law.

(ii) Jurisdiction

212. Jurisdiction at common law.

The right to the writ of habeas corpus is a right which exists at common law independently of any statute, although the right has been confirmed and regulated by statute¹. At common law the jurisdiction to award the writ was exercised by the Courts of Queen's Bench, Chancery and Common Pleas and, in a case of privilege, by the Court of Exchequer². This jurisdiction is now vested in the High Court of Justice³, and is normally exercised by the Divisional Court of the Queen's Bench Division and by the judges of the High Court of Justice in accordance with rules of court⁴.

1 *Ex p Besset* (1844) 6 QB 481. As to statutory jurisdiction see para 213 post.

2 *Bac Abr Habeas Corpus* (B) 1; 2 Co Inst 55; 3 Bl Com (14th Edn) 129 et seq; *Eshugbayi Eleko v Officer Administering the Government of Nigeria* [1928] AC 459 at 466, PC. The writ of habeas corpus, being a high prerogative writ, at common law issued out of the Court of King's Bench, not only in term time but also during vacation: *R v Shebbeare* (1758) 1 Burr 460. If issued in vacation it was usually returnable before the judge who awarded it, and he proceeded himself on it (see the case of a writ directed to Berwicke in 43 Eliz cited 2 Burr 856), unless the term intervened, in which case it might be returned into court (*R v Mead* (1758) 1 Burr 542; *R v Clarke* (1758) 1 Burr 606).

3 The jurisdiction of the old courts of common law is now vested in the High Court of Justice: see COURTS vol 10 (Reissue) para 606.

4 *le CPR Sch 1 RSC Ord 54*: see para 231 et seq post. As to rules of procedure see para 158 ante. As to applications made otherwise than to the Divisional Court of the Queen's Bench Division see para 231 post.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(1) THE WRIT OF HABEAS CORPUS AD SUBJICIENDUM/(ii) Jurisdiction/213. Statutory jurisdiction.

213. Statutory jurisdiction.

The effectiveness of the writ of habeas corpus was increased by the Habeas Corpus Act 1679 (criminal cases) and the Habeas Corpus Act 1816 (non-criminal cases).

The Habeas Corpus Act 1679¹ was passed 'for the better securing the liberty of the subject'. This was effected by specifically meeting the various devices by which the common law right to the writ had until then been evaded, and, in particular, by making the writ readily accessible during the vacation, by obviating the necessity for the issue of a second and third writ known as an 'alias' and 'pluries', by imposing penalties for the refusal of the writ, and, generally, by regulating the granting and issue of the writ and the procedure upon its return².

By this statute any person committed or detained in the vacation for any crime, except for treason plainly expressed in the warrant of commitment, or anyone on his behalf, may apply to any judge of the High Court of Justice, who, upon view of the copy of the warrant of commitment, or upon oath made that the copy was denied by the gaoler, is, under penalty, required, on the written request by the person detained or anyone on his behalf, attested and subscribed by two witnesses, to award a habeas corpus under the seal of the court of which he is a judge, returnable immediately before himself³.

As the Habeas Corpus Act 1679 applied only to cases where persons were detained in custody for some criminal or supposed criminal matter, the benefit of its provisions in facilitating the issue of the writ did not extend to cases of illegal deprivation of liberty otherwise than on a criminal charge, as for example where children were unlawfully detained from their parents or guardians by persons who were not entitled to their custody; where a person was wrongfully kept under restraint as a lunatic; or where a person was illegally kept in confinement by another. In all such cases the issue of the writ during vacation depended solely on the common law, and remained unregulated by statute until 1816, when by the Habeas Corpus Act 1816 any person confined or restrained of his liberty (otherwise than for some criminal or supposed criminal matter, and except persons imprisoned for debt or by process in any civil suit) within England and Wales, the town of Berwick-upon-Tweed or the Isles of Jersey, Guernsey, or Man, upon complaint made to the court by him or on his behalf, supported by affidavit⁴ and where there is a probable and reasonable ground for such complaint, is entitled in vacation time to a writ of habeas corpus ad subjiciendum under the seal of the court, to be directed to the person or persons in whose custody or power he may be, returnable immediately before the person awarding the writ or before any other judge of the court issuing the writ⁵.

1 The writ in modern times is almost invariably issued by virtue of the common law jurisdiction and not under the Habeas Corpus Act 1679. See *R v Campbell* [1959] 2 All ER 557, [1959] 1 WLR 646, in which the purpose and effect of the Habeas Corpus Act 1679 s 6 (now repealed) were discussed.

2 Ibid s 2 (amended by the Criminal Law Act 1967 s 10(2), Sch 3 Pt III; the Courts Act 1971 s 56(1), Sch 8 Pt II para 4(1); and the Bail Act 1976 s 12, Sch 2 para 1), Habeas Corpus Act 1679 s 9 (amended by the Statute Law Revision Act 1888).

3 Habeas Corpus Act 1679 ss 2, 9 (both as amended: see note 2 supra); Administration of Justice Act 1960 s 14(2). See also *Re Kray*, *Re Kray*, *Re Smith* [1965] Ch 736, [1965] 1 All ER 710, Lord Gardiner LC.

4 It is no longer possible to support a complaint by an affirmation: Habeas Corpus Act 1816 s 1 (amended by the Statute Law Revision Act 1948; and the Statute Law (Repeals) Act 1981).

5 Habeas Corpus Act 1816 s 1 (as amended: see note 4 supra). The Habeas Corpus Act 1816 deals separately with the courts of England and Wales on the one hand and with the courts of Ireland on the other; it was never possible for a writ to issue from the courts of England into Ireland under the Act: *Re Keenan* [1972] 1 QB 533, [1971] 3 All ER 883, CA.

UPDATE

213 Statutory jurisdiction

TEXT AND NOTE 2--Habeas Corpus Act 1679 ss 2, 9 further amended: Constitutional Reform Act 2005 Sch 4 paras 4, 5.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(1) THE WRIT OF HABEAS CORPUS AD SUBJICIENDUM/(ii) Jurisdiction/214. Suspension of Habeas Corpus Act 1679.

214. Suspension of Habeas Corpus Act 1679.

The operation of the Habeas Corpus Act 1679¹ has at various periods been temporarily suspended by the legislature on the ground of urgent political necessity. The suspension has usually been effected by a statute enabling persons to be arrested under conditions specified in the statute and detained in custody without bail or trial, notwithstanding any law to the contrary. Such an enactment, while it remains in force, in no sense abrogates or suspends the general right to the writ at common law².

1 As to the Habeas Corpus Act 1679 see para 213 ante.

2 These so-called Suspending Acts operate in effect as a temporary suspension of the rights of the subject with regard to bail and speedy trial in the case of the specific offences which are enumerated in the Suspending Act, but the common law right to the writ of habeas corpus in all other cases remains unaffected. Cf the power which, during the 1939-45 war, was conferred under defence regulations, enabling persons to be detained if the Secretary of State had reasonable cause to believe that they were of hostile origin or associations or had been recently concerned in acts prejudicial to the public safety or the defence of the realm or in the preparation or instigation of such acts. The words 'if the Secretary of State had reasonable cause to believe', as used in this context, meant no more than that the Secretary of State must honestly have supposed that he had reasonable cause to believe the required thing: see *Liversidge v Anderson* [1942] AC 206, [1941] 3 All ER 338, HL. When, however, the words are used in other contexts a different interpretation may be appropriate: see *Nakkuda Ali v MF de S Jayaratne* [1951] AC 66, PC. In *Tan Te Lam v Superintendent of Tai A Chau Detention Centre* [1997] AC 97 at 113, [1996] 4 All ER 256 at 268, PC, it was emphasised that very clear words are required in a statute before the court will accept that the legislature has conferred power on the Executive to determine its own jurisdiction. Following *Liversidge v Anderson* supra it was held in *Greene v Secretary of State for Home Affairs* [1942] AC 284, [1941] 3 All ER 388, HL, that the Secretary of State is not bound to disclose or justify to any court the grounds of his belief. In relation to the onus of proof in these and other cases see *R v Governor of Brixton Prison, ex p Ahsan* [1969] 2 QB 222, [1969] 2 All ER 347, DC. See also generally paras 21-22 ante.

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215. Places to which writ may be granted.

Formerly the writ of habeas corpus lay to any part of the dominions of the Crown¹, including Ireland, Berwick-upon-Tweed, the Isle of Man, the Channel Islands, and the colonies², but the jurisdiction of the English courts so to issue the writ was considerably modified by the Habeas Corpus Act 1862. That Act enacts that no writ of habeas corpus may issue out of England by authority of any English judge or court of justice into any colony or foreign dominion of the Crown³ where the Crown has a lawfully established court or courts of justice having authority to grant and issue the writ and to ensure its due execution throughout that colony or dominion⁴. The writ may still issue from the English courts to the Isle of Man, that island not being a foreign dominion of the Crown within the meaning of the statute⁵.

The writ of habeas corpus does not run in Scotland⁶. The writ will not issue in England in respect of persons detained in the Republic of Ireland⁷ or in Northern Ireland⁸. Nor will the writ issue in respect of persons detained in a foreign territory not forming part of Her Majesty's dominions, even though Her Majesty may have certain jurisdiction there derived from treaties and from the Foreign Jurisdiction Acts 1890 and 1913⁹.

Under the Habeas Corpus Act 1679¹⁰, the writ within the meaning of that Act may be directed and run into any county palatine, the Cinque Ports, or other privileged places within England,

Wales, or Berwick-upon-Tweed, and the islands of Jersey or Guernsey, notwithstanding any law or usage to the contrary¹¹.

Under the Habeas Corpus Act 1816¹², the writ within the meaning of that Act may be directed and run into any county palatine, Cinque Port or any other privileged place within England, Wales, Berwick-upon-Tweed and the Isles of Jersey, Guernsey and Man, and also into any port, harbour, road, creek or bay on the coast of England or Wales, although the same should lie out of the body of any county, notwithstanding any law or usage to the contrary¹³.

1 See 2 Roll Abr 69; *Bourn's Case* (1619) Cro Jac 543; *R v Pell and Offly* (1674) 3 Keb 279; 3 Bl Com (14th Edn) 131.

2 See *R v Cowle* (1759) 2 Burr 834 at 855. At common law the writ lay to Calais at the time when that place was a British possession (*Bourn's Case* (1619) as reported in Palm 54); to Jersey and Guernsey (*Anon* (1681) 1 Vent 357; *R v Overton* (1668) 1 Sid 386; *R v Salmon* (1669) 2 Keb 450; *Dodd's Case* (1858) 2 De G & J 510); to Upper Canada (*Ex p Anderson* (1861) 3 E & E 487; *Re Belson* (1850) 7 Moo PCC 114; *Carus Wilson's Case* (1845) 7 QB 984 at 998 per Lord Denman CJ); to the Cinque Ports (*Bourn's Case* (1619) Palm 96); to Ireland (*Anon* (1681) 1 Vent 357); to Berwick-upon-Tweed (*Bourn's Case* (1619) Cro Jac 543); to a county palatine (*Jobson's Case* (1626) Lat 160; *R v Pell and Offly* (1674) 3 Keb 279; Bac Abr Habeas Corpus (B) 6); to Canada (*Ex p Anderson* (1861) 3 E & E 487).

3 A protectorate is not a 'foreign dominion of the Crown': see COMMONWEALTH vol 13 (2009) PARA 708.

4 Habeas Corpus Act 1862 s 1.

5 *Re Brown* (1864) 33 LJQB 193; cf *Re Crawford* (1849) 13 QB 613. See also *R v Commandant of Knockaloe Camp, ex p Forman* (1917) 87 LJBK 43, DC (rule nisi granted to show cause why a writ should not issue to a person in the Isle of Man).

6 See *R v Cowle* (1759) 2 Burr 834 at 856 per Lord Mansfield CJ; *Wan Ping Nam v Minister of Justice of Germany* 1972 SC 43. Until the accession of James I in 1603, when the Crowns of England and Scotland were united, Scotland was regarded by the common law as a foreign dominion to which the prerogative writs would not lie, and the writ of habeas corpus is unknown to the law of Scotland: *R v Cowle* supra.

7 Since 1782 the English courts have not had jurisdiction to issue the writ in respect of persons detained in Ireland: *Re Keenan* [1972] 1 QB 533, [1971] 3 All ER 833, CA.

8 See *Re Keenan* [1972] 1 QB 533, [1971] 3 All ER 833, CA.

9 See *R v Earl of Crewe, ex p Sekgome* [1910] 2 KB 576, CA; *Re Ning Yi-Ching* (1939) 56 TLR 3; cf *Re Mwenya* [1960] 1 QB 241 at 280, [1959] 3 All ER 525, CA (habeas corpus may issue from the High Court in respect of the wrongful detention of a British subject in a protectorate if it is demonstrated that the authority of the Crown in the protectorate is indistinguishable in substance from that exercised in a colony). For the meaning of 'protectorate' see COMMONWEALTH vol 13 (2009) PARA 708.

10 See para 213 ante.

11 Habeas Corpus Act 1679 s 10 (amended by the Statute Law Revision Act 1888). As to counties palatine see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 307. As to the Cinque Ports see SHIPPING AND MARITIME LAW vol 93 (2008) PARA 210.

12 See para 213 ante.

13 Habeas Corpus Act 1816 s 5 (amended by the Statute Law Revision Act 1888; and the Statute Law Revision Act 1948).

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216. Writ against persons abroad.

The writ of habeas corpus cannot be issued against a person who is abroad, it being issuable only for immediate service on a person who is within the jurisdiction at the date of issue¹; or against a person who is on board a public vessel of war of a foreign state even though in British waters²; or in respect of an alien detained, in this country, in a foreign embassy or legation of the country to which he belongs³. It seems that the writ will not issue to a custodian in this country where the original and present detention is in a foreign country merely by reason of the physical presence in this country of the custodian⁴.

1 *R v Pinckney* [1904] 2 KB 84, CA, where it was also held that the writ cannot be ordered to lie in the office until the respondent comes within the jurisdiction. See also *Bourn's Case* (1619) Cro Jac 543; *R v Cowle* (1759) 2 Burr 834; *Barnardo v Ford, Gossage's Case* [1892] AC 326, HL; *R v Earl of Crewe, ex p Sekgome* [1910] 2 KB 576, CA. See also *Ex p Wyatt* (1837) 5 Dowl 389, especially at 391 per Patteson J.

2 This exemption results from the doctrine of international law as to the extra-territoriality of public armed vessels of a sovereign within the territorial waters of another state, by which the vessel is regarded as protecting the persons on board her from both civil and criminal jurisdiction of the local tribunals. See 1 Oppenheim's International Law (9th Edn) 1165 et seq. See also FOREIGN RELATIONS LAW vol 18(2) (Reissue) para 727.

3 *Re Sun Yat* (1896) 22 October, cited in Short and Mellor's Crown Office Practice (2nd Edn) 318, where Wright J, in chambers, refused an application for a writ of habeas corpus on behalf of a Chinese subject who was alleged to be detained against his will in the Chinese legation in London. The immunity from the writ in such a case is based on diplomatic privilege: see FOREIGN RELATIONS LAW vol 18(2) (Reissue) para 871 et seq.

4 *Re Mwenya* [1960] 1 QB 241 at 280, [1959] 3 All ER 525 at 542, CA, per Sellers LJ.

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(iii) Application of the Writ of Habeas Corpus

217. In general.

The remedy by habeas corpus is equally available in criminal and civil cases provided that there is a deprivation of personal liberty without legal justification¹.

Many of the purposes to which the writ has been applied in the past are of historical interest rather than of present importance. Thus, aliens who have been brought to this country in a condition of slavery have attained freedom by means of habeas corpus².

In modern practice applications to the High Court for writs of habeas corpus have been concerned primarily with:

- (1) the committal or detention of prisoners³;
- (2) the detention of persons in pursuance of deportation orders and orders for the extradition or rendition of fugitive offenders⁴;
- (3) the detention of immigrants who have been refused leave to land in the United Kingdom⁵; and
- (4) the detention of persons suffering from mental disorders⁶.

1 See para 208 ante.

2 *Sommersett's Case* (1772) 20 State Tr 1; *Shanley v Harvey* (1762) 2 Eden 126; *The Slave Grace* (1827) 2 Hag Adm 94; *Hottentot Venus Case* (1810) 13 East 195.

The writ of habeas corpus was formerly used as a means of securing freedom in cases of illegal impressment for the naval or military forces of the Crown, but impressment, although within certain limits legal as a means of recruiting in the case of the navy and based on the royal prerogative, is no longer resorted to: see *R v King* (1694) Comb 245; *Ex p Fox* (1793) 5 Term Rep 276; *Ex p Grocot* (1825) 5 Dow & Ry KB 610; *Ex p Harrison* (1805) 2 Smith KB 408. During the 1914-18 war, attempts were made to use the writ of habeas corpus as a means of escaping from compulsory military service under the provisions of the Military Service Acts: see *R v Commanding Officer of Morn Hill Camp, ex p Ferguson* [1917] 1 KB 176, DC; *R v Commanding Officer of 30th Battalion, Middlesex Regiment, ex p Freyberger* [1917] 2 KB 129, CA; *R v Jones* [1916] 2 IR 7. See also ARMED FORCES.

3 See para 218 post.

4 See paras 219-221 post.

5 See para 222 post.

6 See para 226 post.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(1) THE WRIT OF HABEAS CORPUS AD SUBJICIENDUM/(iii) Application of the Writ of Habeas Corpus/218. Illegal commitment.

218. Illegal commitment.

A person who is in custody under a warrant or order of commitment may test the validity of the warrant or order under which he is detained by means of the writ of habeas corpus¹, as, for instance, where he is imprisoned under the sentence of a naval, military² or ecclesiastical court³, or interned under the authority of some emergency statute⁴. Habeas corpus may, further, be available when a suspect has been detained by the police for an unduly long period without being charged⁵.

On the return to a writ of habeas corpus in a case of alleged irregularity in the commitment the court exercises its jurisdiction as follows. If it appears clearly that the act for which the party is committed is no crime, or that it is a crime but he is committed for it by a person who has no jurisdiction, the court will discharge him⁶. If it is doubtful whether the act is a crime or not or whether the party has been committed by a person or court of competent jurisdiction, or if it appears to be a crime but a bailable one, the court may bail him. If the offence is not a bailable one and the prisoner is committed by a person or court of competent jurisdiction, the court remands or commits him⁷.

Failure of the conditions of detention to meet a minimum standard may render the detention unlawful and lead to the grant of a writ of habeas corpus⁸.

1 As illustrations of cases in which the regularity of commitments has been tested on habeas corpus see *Ex p Allen* (1834) 3 Nev & MKB 35; *R v Bowen* (1840) 9 C & P 509; *Re Dunn* (1847) 5 CB 215; *Re Newton* (1849) 13 QB 716; *R v Lees* (1858) 27 LJQB 403; *Ex p Cross* (1857) 2 H & N 354; *Re Timson* (1870) LR 5 Exch 257; *A-G for the Colony of Hong Kong v Kwok-a-Sing* (1873) LR 5 PC 179; *R v Mount* (1875) LR 6 PC 283; *Cox v Hakes* (1890) 15 App Cas 506, HL; *R v Jones* [1916] 2 IR 7; and the cases cited in para 209 note 3 ante. So also commitment for non-payment of arrears of maintenance may be tested by application for habeas corpus: see *R v Governor of Bedford Prison, ex p Ames* [1953] 1 All ER 1002, [1953] 1 WLR 607. As to the essentials to the validity of a warrant or an order of commitment see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1162; MAGISTRATES. The wrongful detention of a prisoner to serve the remanet of an old sentence is a matter for a writ of habeas corpus (*R v Williams* (1909) 3 Cr App Rep 2, CCA), as is the wrongful detention of a

person subject to a deportation order (with a direction that the person was not to be detained) who was erroneously ordered to be detained by a judge (see *Sirros v Moore* [1975] QB 118, [1974] 3 All ER 776, CA).

The writ of habeas corpus ad respondendum is available in circumstances where it is desired to bring a prisoner up for trial or to be examined, whether or not the prisoner has been illegally detained: see para 250 post.

2 *Wolfe Tone's Trial* (1798) 27 State Tr 613; *R v Suddis* (1801) 1 East 306; *Re Douglas* (1842) 3 QB 825; *R v Cumming, ex p Hall* (1887) 19 QBD 13, DC; and see the cases cited in para 227 note 3 post; and ARMED FORCES. In *Blake's Case* (1814) 2 M & S 428, a writ of habeas corpus was granted on the allegation that a person under military arrest had not been specially tried by court-martial pursuant to military law. As to whether a civil court has jurisdiction to interfere with the decision of a military court while war is actually raging see *R v Allen* [1921] 2 IR 241; *Egan v Macready* [1921] 1 IR 265.

3 *Cox v Hakes* (1890) 15 App Cas 506, HL, where a clerk in holy orders had been arrested and imprisoned for contumacy under a writ de contumace capiendo, and a writ of habeas corpus was granted by the Queen's Bench Division (*Ex p Cox (Bell)* (1887) 19 QBD 307); and the House of Lords upheld the decision.

4 See paras 209 note 4, 214 note 2 ante.

5 *R v Holmes, ex p Sherman* [1981] 2 All ER 612. See also the Police and Criminal Evidence Act 1984 Pt IV (ss 34-52) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 938 et seq.

6 In the case of a commitment after conviction, it is the duty of the court to look at the conviction in order to see whether there is more than a mere technical defect in the commitment, and if there is no defect in the conviction a writ of habeas corpus will not be granted, notwithstanding that the warrant of commitment is patently bad: *R v Governor of Lewes Prison, ex p Doyle* [1917] 2 KB 254, DC; and see *R v Governor of Brixton Prison, ex p Salvini* [1914] 1 KB 77, DC.

7 See para 223 post.

8 By virtue of the Human Rights Act 1998 s 6 (see para 87 ante), the minimum standard must be at least that secured by those articles of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) Cmd 8969) incorporated into English law by the Human Rights Act 1998 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS), in particular the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 3 (the prohibition of torture and inhuman or degrading treatment and punishment), art 4 (prohibition of slavery and forced labour), art 5 (right to liberty and security), art 6 (right to a fair trial) and art 7 (no punishment without law) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 124 et seq). As to the position prior to the Human Rights Act 1998 coming into force on 2 October 2000 see *R v Metropolitan Police Comr, ex p Nahar* (1983) Times, 28 May, DC. On the question whether judicial review may be sought of the conditions of detention where the conditions are alleged to amount to 'cruel and unusual punishment' contrary to the Bill of Rights (1688) see *R v Secretary of State for the Home Department, ex p Herbage (No 2)* [1987] QB 1077, [1987] 1 All ER 324, CA.

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219. Extradition in general.

The Extradition Act 1989¹ provides two procedures governing the extradition of an individual from the United Kingdom² to the requesting state³. In any case, it is necessary to identify which (if either⁴) of these procedures governs the arrangements between the United Kingdom and the requesting state.

1 As to the law and practice relating to extradition see EXTRADITION.

2 For the meaning of 'United Kingdom' see para 14 note 19 ante.

3 The first procedure is set out in the Extradition Act 1989 Pt III (ss 7-17) (as amended) (see EXTRADITION vol 17(2) (Reissue) paras 1105 et seq, 1184 et seq) and the second procedure is contained in s 1(3), Sch 1 (as amended) (see EXTRADITION vol 17(2) (Reissue) paras 1110, 1209 et seq).

4 There are various miscellaneous arrangements: see EXTRADITION vol 17(2) (Reissue) para 1111 et seq.

UPDATE

219 Extradition in general

TEXT AND NOTES--1989 Act repealed: Extradition Act 2003 Sch 4.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(1) THE WRIT OF HABEAS CORPUS AD SUBJICIENDUM/(iii) Application of the Writ of Habeas Corpus/220. Extradition: applications for habeas corpus.

220. Extradition: applications for habeas corpus.

A person who has been committed to custody¹ by a magistrate to await the outcome of a request for his return to another state has a right to apply for a writ of habeas corpus for the purpose of testing the validity of his committal².

It is the duty of a magistrate when committing a prisoner for extradition to inform him that he will not be surrendered until after the expiration of 15 days, and that he has a right to apply for a writ of habeas corpus³.

No one may be surrendered for extradition in respect of an offence which is of a political character⁴, and where a magistrate commits a prisoner for extradition, his decision that the offence charged is not of a political character may be reviewed by the High Court on an application for a writ of habeas corpus⁵.

In addition, in certain cases⁶, the High Court must order the discharge of the person committed if certain statutory criteria are met⁷.

1 A person is to be treated as being 'in custody' for these purposes notwithstanding a remand on bail: *R v Secretary of State for the Home Department, ex p Launder (No 2)* [1998] QB 994 at 1000-1001, [1998] 3 WLR 221 at 225, DC, per Simon Brown LJ and at 1011 and 235-236 per Mance J.

2 For examples of recent applications for the writ of habeas corpus to test the validity of extradition see *R v Governor of Pentonville Prison, ex p Sinclair* [1991] 2 AC 64, sub nom *Sinclair v DPP* [1991] 2 All ER 366, HL; *R v Governor of Brixton Prison, ex p Osman (No 3)* [1992] 1 All ER 122, [1992] 1 WLR 36, DC; *R v Governor of Pentonville Prison, ex p Lee* [1993] 3 All ER 504, [1993] 1 WLR 1294, DC; *Re Schmidt* [1995] 1 AC 339, sub nom *Schmidt v Germany* [1994] 3 All ER 65, HL; *R v Secretary of State for the Home Department, ex p Patel* (1994) 7 Admin LR 56, Times, 10 February, DC; *Re Barone* (7 November 1997, unreported), DC; *R v Governor of Belmarsh Prison, ex p Dunlayici* (1996) Times, 2 August, DC; *Cuoghi v Governor of Brixton Prison* [1997] 1 WLR 1346, CA; *R v Secretary of State for the Home Department, ex p Hill* [1999] QB 886, [1997] 2 All ER 638, DC; *Cornelius v Sweden* (17 June 1998) Lexis, Enggen Library, Cases File, DC; *R v Secretary of State for the Home Department, ex p Launder (No 2)* [1998] QB 994, [1998] 3 WLR 221, DC; *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No 3) (Amnesty International intervening)* [2000] 1 AC 147, [1999] 2 All ER 97, HL; *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Government of the United States of America* [1999] 4 All ER 1, [1999] 3 WLR 620, HL; *R v Bow Street Magistrates' Court, ex p Raccagni* (17 December 1998) Lexis, Enggen Library, Cases File, DC.

The representative of a government requisitioning the extradition of an alleged criminal may be directed to be served (under CPR Sch 1 RSC Ord 54 r 2(2) (see para 232 post)) with the claim form on his behalf for habeas corpus and may be represented and heard on the application: *R v Governor of Brixton Prison, ex p Minervini* [1959] 1 QB 155, [1958] 3 All ER 318, DC. As to the CPR see para 158 ante.

For the powers of the court upon an application for a writ of habeas corpus to review the case as it appeared before the magistrate see para 228 post.

3 Extradition Act 1989 ss 1(3), 11, Sch 1 para 1(5) (see EXTRADITION vol 17(2) (Reissue) paras 1183, 1207, 1217 et seq).

4 See ibid s 6(1), Sch 1 para 1(1), (2) (as amended); and EXTRADITION vol 17(2) (Reissue) paras 1174 et seq, 1203 et seq.

5 See ibid s 6(1), (9), Sch 1 para 1(2) (as amended); and EXTRADITION vol 17(2) (Reissue) paras 1174, 1203. See eg *R v Governor of Brixton Prison, ex p Kolczynski* [1955] 1 QB 540, [1955] 1 All ER 31, DC; *Germany v Sotiriadis* [1975] AC 1 at 30, [1974] 1 All ER 692 at 705-706, HL, per Lord Diplock. Fresh evidence on the question of the political character of the offence may be admitted by the court hearing the application for habeas corpus: see *Schtraks v Israel* [1964] AC 556, [1962] 3 All ER 529, HL; *Re Nobbs* [1978] 3 All ER 390, [1978] 1 WLR 1302. Fresh or additional evidence on the political nature of an offence in respect of which a person has been committed under the Backing of Warrants (Republic of Ireland) Act 1965 is not admissible on an application for habeas corpus. See further EXTRADITION vol 17(2) (Reissue) para 1287 et seq; and para 228 post.

6 le those brought under the Extradition Act 1989 Pt III (ss 7-17) (as amended): see para 219 ante.

7 See ibid s 11(3); and EXTRADITION vol 17(2) (Reissue) para 1222. This provision requires the High Court to order the release of the individual if it appears to the court that his return would be unjust or oppressive (1) by reason of the trivial nature of the offence; (2) by reason of the passage of time; or (3) because the accusation against him is not made in good faith in the interests of justice: see s 11(3).

UPDATE

220 Extradition: applications for habeas corpus

TEXT AND NOTES--1989 Act repealed: Extradition Act 2003 Sch 4.

NOTE 5--1965 Act repealed: Extradition Act 2003 Sch 4.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(1) THE WRIT OF HABEAS CORPUS AD SUBJICIENDUM/(iii) Application of the Writ of Habeas Corpus/221. Deportation.

221. Deportation.

An alien who is being held in custody pending deportation may challenge the lawfulness of the detention by way of habeas corpus¹. Further, if an alien has been detained pending deportation for an unreasonably long period, he may apply for a writ of habeas corpus².

1 See eg *R v Governor of Brixton Prison, ex p Soblen* [1963] 2 QB 243, [1962] 3 All ER 641, CA; *R v Governor of Brixton Prison, ex p Havlidge (otherwise Gruschwitz)* [1969] 1 All ER 109, [1969] 1 WLR 42, DC; *R v Secretary of State for the Home Department, ex p Cheblak* [1991] 2 All ER 319, [1991] 1 WLR 890, CA; *R v Secretary of State for the Home Department, ex p Rahman* [1998] QB 136, [1997] 1 All ER 796, CA. As to deportation see generally BRITISH NATIONALITY AND IMMIGRATION vol 4(2) (2002 Reissue) para 160 et seq.

2 *R v Governor of Durham Prison, ex p Hardial Singh* [1984] 1 All ER 983, [1984] 1 WLR 704. See also *R v Governor of Holloway Prison, ex p Giambi* [1982] 1 All ER 434, [1982] 1 WLR 535, DC.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(1) THE WRIT OF HABEAS CORPUS AD SUBJICIENDUM/(iii) Application of the Writ of Habeas Corpus/222. Detention of immigrants.

222. Detention of immigrants.

A person who is in custody after being refused admission to the United Kingdom or after an order has been made for his removal from the country pursuant to immigration legislation¹ may test the validity of the refusal or order by way of habeas corpus². Alternatively, the order may be challenged by way of an application for judicial review³. The principles which the court will apply will be the same whether the application is for habeas corpus or judicial review⁴. If the applicant makes out a prima facie case that he has been unlawfully detained⁵, the burden of proof rests with the immigration authorities to show that the applicant has been lawfully detained⁶. The standard of proof required of the immigration authorities is the civil standard but, since grave issues of personal liberty are involved, the degree of probability required will be high⁷.

1 The current legislation is the Immigration Act 1971, as amended by the British Nationality Act 1981, the Immigration Act 1988 and the Immigration and Asylum Act 1999. The practice to be followed in the administration of the Immigration Act 1971 for regulating entry into and the stay of persons in the United Kingdom is set out in the *Statement of Changes in Immigration Rules 1994* (HC Paper (1994) no 395): see BRITISH NATIONALITY AND IMMIGRATION vol 4(2) (2002 Reissue) para 84 et seq.

2 Habeas corpus is available to aliens: there is no distinction between British nationals and others. 'He who is subject to English law is entitled to its protection': *Khawaja v Secretary of State for the Home Department* [1984] AC 74 at 111, [1983] 1 All ER 765 at 782, HL, per Lord Scarman. For examples of applications for the writ of habeas corpus in immigration cases see *Azam v Secretary of State for the Home Department* [1974] AC 18, [1973] 2 All ER 765, HL; *Re Hassan* [1976] 2 All ER 123, [1976] 1 WLR 971, DC; *Khan v Secretary of State for the Home Department* [1977] 3 All ER 538, [1977] 1 WLR 1466, CA; *R v Secretary of State for the Home Department, ex p Ram* [1979] 1 All ER 687, [1979] 1 WLR 148, DC; *R v Secretary of State for the Home Department, ex p Mangoo Khan* [1980] 2 All ER 337, [1980] 1 WLR 569, CA; *R v Secretary of State for the Home Department, ex p Parvaz Akhtar* [1981] QB 46, [1980] 2 All ER 735, CA; *R v Governor of Holloway Prison, ex p Giambi* [1982] 1 All ER 434, [1982] 1 WLR 535, DC; *R v Governor of Durham Prison, ex p Hardial Singh* [1984] 1 All ER 983, [1984] 1 WLR 704; *Khawaja v Secretary of State for the Home Department* supra; *R v Secretary of State for the Home Department, ex p Swati* [1986] 1 All ER 717, [1986] 1 WLR 477, CA (cf *R v Secretary of State for the Home Department, ex p Mughal* [1973] 1 WLR 1133 at 1136, DC, per Lord Widgery CJ (affd [1974] QB 313, [1973] 3 All ER 796, CA); *R v Secretary of State for the Home Department, ex p Phansopkar* [1976] QB 606, [1975] 3 All ER 497, DC (on appeal [1976] 1 QB 606, [1975] 3 All ER 497, CA) in which Lord Widgery CJ at 611 and 501, stated that cases where a person was in custody because he had been refused entry into the United Kingdom were inappropriate cases for habeas corpus, since the person was free to leave the United Kingdom at any time; but see *R v Secretary of State for the Home Department, ex p Parvaz Akhtar* supra. See also *Re Ologbengo (Olysanya)* [1988] Imm AR 117, DC; *R v Secretary of State for the Home Department, ex p Muboyayi* [1992] QB 244, [1991] 4 All ER 72, CA; *Tan Te Lam v Superintendent of Tai A Chau Detention Centre* [1997] AC 97, [1996] 4 All ER 256, PC.

3 An application for judicial review will be inappropriate, save in exceptional circumstances, where there is an alternative remedy by way of appeal: *R v Secretary of State for the Home Department, ex p Swati* [1986] 1 All ER 717, [1986] 1 WLR 477, CA. For an example of 'exceptional circumstances' see *R v Chief Immigration Officer, Gatwick Airport, ex p Kharrazi* [1980] 3 All ER 373, [1980] 1 WLR 1396, CA. However, a person who can make out a prima facie case that he is not an illegal entrant may apply for habeas corpus and is not obliged to rely on the less convenient remedy given by the Immigration and Asylum Act 1999 s 66 (see BRITISH NATIONALITY AND IMMIGRATION vol 4(2) (2002 Reissue) para 177), after removal from the United Kingdom: *Azam v Secretary of State for the Home Department* [1974] AC 18 at 32, [1973] 2 All ER 741 at 751, CA, per Lord Denning MR, at 41 and 758 per Buckley LJ and at 42 and 759-760 per Stephenson LJ (on appeal [1974] AC 18, [1973] 2 All ER 765, HL) (considering the Immigration Act 1971 s 16 (repealed)); *Khawaja v Secretary of State for the Home Department* [1984] AC 74 at 101, 123, [1983] 1 All ER 765 at 774-775, 791, HL, per Lord Wilberforce and Lord Bridge of Harwich. As to judicial review see para 58 et seq ante.

4 *Khawaja v Secretary of State for the Home Department* [1984] AC 74 at 99, [1983] 1 All ER 765 at 773, HL, per Lord Wilberforce.

5 Eg because the applicant's leave to enter is, on its face, valid: see *Khawaja v Secretary of State for the Home Department* [1984] AC 74 at 124, [1983] 1 All ER 765 at 792, HL, per Lord Bridge of Harwich. See also *Re Hassan* [1976] 2 All ER 123, [1976] 1 WLR 971, DC.

6 *Khawaja v Secretary of State for the Home Department* [1984] AC 74 at 101, [1983] 1 All ER 765 at 774-775, HL, per Lord Wilberforce, at 112 and 782-783 per Lord Scarman, at 124 and 792 per Lord Bridge of Harwich and at 128 and 794-795 per Lord Templeman. See also *R v Governor of Brixton Prison, ex p Ahsan* [1969] 2 QB 222, [1969] 2 All ER 347, DC. Where the immigration authorities' power to detain depends on the precedent establishment of an objective fact (for example that an immigrant's leave to enter was fraudulently obtained), the courts will decide whether the fact exists; they will not limit themselves to deciding whether the immigration authorities had reasonable grounds for believing the fact to exist: *Khawaja v Secretary of State for the Home Department* supra; see, in particular, at 104-105 and 776-777 per Lord Wilberforce, and at 110 and 781 per Lord Scarman, disapproving statements supporting the contrary approach in *R v Secretary of State for the Home Department, ex p Hussain* [1978] 2 All ER 423, [1978] 1 WLR 700, DC, per Geoffrey Lane LJ; *R v Secretary of State for the Home Department, ex p Choudhary* [1978] 3 All ER 790, [1978] 1 WLR 1177, CA; and *Zamir v Secretary of State for the Home Department* [1980] AC 930, [1980] 2 All ER 768, HL. See also *R v Governor of Brixton Prison, ex p Ahsan* supra; *R v Secretary of State for the Home Department, ex p Ram* [1979] 1 All ER 687, [1979] 1 WLR 148, DC; *Tan Te Lam v Superintendent of Tai A Chau Detention Centre* [1997] AC 97 at 113-114, [1996] 4 All ER 256 at 267-268, PC.

7 *Khawaja v Secretary of State for the Home Department* [1984] AC 74, [1983] 1 All ER 765, HL. Previously, the view had been expressed that the criminal standard of proof was appropriate in habeas corpus proceedings. See *Eshugbayi Eleko v Officer Administering the Government of Nigeria* [1931] AC 662 at 670, PC, per Lord Atkin; *R v Governor of Brixton Prison, ex p Ahsan* [1969] 2 QB 222 at 230, [1969] 2 All ER 347 at 351, DC, per Lord Parker CJ.

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223. Admission to bail.

The remedy at common law for the improper refusal of bail was by writ of habeas corpus¹. The remedy has in practice been superseded in criminal proceedings by the statutory procedure for securing release on bail².

An exception to the authority of the courts to admit to bail is where the commitment is for a contempt or in execution³. Thus, the courts will refuse habeas corpus to admit to bail or to discharge out of custody where a person has been committed for contempt by the House of Lords or the House of Commons⁴; for the adjudication that an act is a contempt or breach of privilege amounts to a conviction, and the commitment in consequence is execution⁵.

The remedy of habeas corpus is further available in circumstances where police have detained a suspect for an undue period without charge⁶.

1 4 Co Inst 70. For an historical discussion see *Re Kray, Re Kray, Re Smith* [1965] Ch 736 at 740 et seq, [1965] 1 All ER 710 at 713 et seq per Lord Gardiner LC.

2 See CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1165 et seq. See, however, *Re Marshall* [1994] Crim LR 915, 159 JP 688, DC (habeas corpus granted where requirements under the Bail Act 1976 s 7 not complied with).

3 4 Bl Com (14th Edn) 299, 300; and see paras 228 note 1, 229, 239 post. See generally CONTEMPT OF COURT; EXECUTION.

4 *R v Flower* (1799) 8 Term Rep 314.

5 *Brass Crosby's Case* (1771) 3 Wils 188 at 199 per De Grey CJ; see also *R v Beardmore* (1759) 2 Burr 792; and para 229 post.

6 *R v Holmes, ex p Sherman* [1981] 2 All ER 612. See also the Police and Criminal Evidence Act 1984 Pt IV (ss 34-52) (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(2) (2006 Reissue) para 938 et seq.

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224. Custody of minors.

A parent, guardian, or other person who is legally entitled to the custody of a minor¹ can regain that custody when wrongfully deprived of it by means of the writ of habeas corpus². For the purpose of the issue of the writ, the unlawful detention of a minor from the person who is legally entitled to his custody is regarded as equivalent to an unlawful imprisonment of the minor³. In applying for the writ it is, therefore, unnecessary to allege that any restraint or force is being used towards the minor by the person in whose custody and control he is for the time being⁴.

Where a foreign parent who is resident abroad applies by agent for habeas corpus to regain the custody of a minor who is living with a relation in England, the courts will not allow the minor to be handed over to the parent's agent to be taken abroad, unless there is good reason for the parent not attending personally to receive him⁵.

Where a parent has voluntarily parted with the custody of a minor by entrusting him to another person, and that person has handed the minor to a third person without the parent's authority, a writ of habeas corpus will be issued at the instance of the parent, even though the person to whom the minor was entrusted alleges that he does not know where the minor is; for the parent is entitled to require a return to be made to the writ, so that the facts may be fully investigated⁶.

The courts will not, however, allow either an application for habeas corpus or a prerogative order or the use of wardship proceedings to defeat the powers vested in immigration officers under the immigration legislation⁷.

1 Ie a person with parental responsibility within the meaning of the Children Act 1989 ss 2, 3: see CHILDREN AND YOUNG PERSONS vol 5(3) (2008 Reissue) para 133 et seq.

2 Applications for writs of habeas corpus to obtain or recover custody of a minor are comparatively rare. Indeed, it has been held that the use of the writ of habeas corpus is inappropriate in proceedings in the Family Division and that issues relating to the custody of minors should be dealt with under the wardship jurisdiction: see *Re K (A Minor)* (1978) 122 Sol Jo 626. Applications for habeas corpus involving minors are made to the Family Division: see para 231 post. However, in practice the remedy has been superseded by the wardship jurisdiction.

As to the jurisdiction and powers of the court in relation to the adoption, guardianship, wardship and custody of minors generally see CHILDREN AND YOUNG PERSONS.

3 *R v Clarke* (1857) 7 E & B 186 at 193 per Lord Campbell CJ.

4 *Ex p McClellan* (1831) 1 Dowl 81.

5 *R v Scherschewsky* (1892) 8 TLR 571; see also *Re Preston* (1847) 5 Dow & L 233. In *R v Scherschewsky* supra the children of foreign parents were residing with their mother in England; the English courts on an application by an attorney for habeas corpus at the instance of the father, who was abroad and who desired to regain the custody of the children, refused to hand them over to an agent of the father to be taken abroad in the absence of a valid reason for the father's non-attendance in person to receive them. As to the law governing

the right of a foreign parent to the custody of his child resident in England see CONFLICT OF LAWS vol 8(3) (Reissue) para 266 et seq.

6 *Barnardo v Ford, Gossage's Case* [1892] AC 326, HL; and see para 211 note 3 ante.

7 *Re HK (an infant)* [1967] 2 QB 617, [1967] 1 All ER 226, DC; *Re Mohammed Arif (an infant)* [1968] Ch 643, [1968] 2 All ER 145; on appeal [1968] Ch 643 at 650, [1968] 2 All ER 145 at 149, CA. See further BRITISH NATIONALITY AND IMMIGRATION.

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225. Husband and wife.

At common law a husband is entitled to the custody of his wife against all other persons¹, and the writ of habeas corpus is available to a husband for the purpose of regaining the custody of his wife if she is wrongfully detained by anyone from him without her consent². He cannot, however, obtain the writ where his wife has left him on account of his ill-usage and cruelty³, or where she lives apart from him by her own wish and is under no restraint⁴; for a husband has not the same right to the custody of his wife's person as a father has to the custody of his child, and a wife is entitled to exercise her judgment and discretion as to remaining away from her husband⁵.

A wife is entitled to a writ of habeas corpus directed to her husband if she is wrongfully restrained by him against her will after the execution of a deed of separation⁶, or if he attempts to enforce his conjugal rights by keeping her in confinement or forcibly detaining her in his custody⁷.

1 *Atwood v Atwood* (1718) Prec Ch 492; *Re Cochrane* (1840) 8 Dowl 630.

2 *Re Cochrane* (1840) 8 Dowl 630. See, however, *R v Jackson* [1891] 1 QB 671, CA; *Re Price* (1860) 2 F & F 263. Quaere whether this use of the writ is now obsolete.

3 *R v Brooke and Fladgate, Gregory's Case* (1766) 4 Burr 1991.

4 *R v Leggatt* (1852) 18 QB 781.

5 *Ex p McClellan* (1831) 1 Dowl 81 at 86; *R v Leggatt* (1852) 18 QB 781; *R v Jackson* [1891] 1 QB 671, CA; cf *Place v Searle* [1932] 2 KB 497, CA.

6 *Lister's Case* (1721) 8 Mod Rep 22.

7 *R v Jackson* [1891] 1 QB 671, CA.

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226. Detention on ground of mental disorder.

The writ of habeas corpus may issue at the instance of any person who is wrongfully kept in confinement on the pretence that he is suffering from mental disorder to compel the person having custody to produce him in court, so that the legality of the detention may be inquired into¹. It is essential in such a case that there should be an affidavit by the person alleged to be suffering from mental disorder, or that there should be clear evidence that he is prevented from making an affidavit².

On an application for a writ in a case where a person is alleged to be detained without justification as a person suffering from mental disorder, the court will usually order the person so detained to be medically examined by an expert, the application being postponed until after the result of the medical examination has been reported³.

However, whilst habeas corpus is a possible course of action for such an applicant, judicial review is more appropriate and ought, where possible, to be the only basis for the court's consideration⁴.

1 *R v Turlington* (1761) 2 Burr 1115; *Re Shuttleworth* (1846) 9 QB 651; *R v Pinder, Re Greenwood* (1855) 24 LJQB 148. See also *R v Wright* (1731) 2 Stra 915; *Re S-C (Mental Patient: Habeas Corpus)* [1996] QB 599, [1996] 1 All ER 532, CA. As to persons suffering from mental disorders generally see the Mental Health Act 1983; and MENTAL HEALTH vol 30(2) (Reissue) para 596 et seq. See also *Re VE (Mental Health Patient)* [1973] QB 452, [1972] 3 All ER 373, DC (where a mental health review tribunal stated a case under the Mental Health Act 1959 s 124(5) (repealed: see now the Mental Health Act 1983 s 78(8) (see MENTAL HEALTH vol 30(2) (Reissue) para 575)), in order to test the legality of a patient's detention); *R v Board of Control, ex p Ratty* [1956] 2 QB 109, [1956] 1 All ER 769, DC; *R v Bournewood Community and Mental Health NHS Trust, ex p L* [1999] 1 AC 458, [1998] 3 All ER 289, HL (informal detention of patients who are unable to consent to detention may take place under the Mental Health Act 1983).

In *X v United Kingdom* (1981) 4 EHRR 188, the European Court of Human Rights held that the right of a long-term mental patient to apply for a writ of habeas corpus did not, given the limited scope of review undertaken by the court in habeas corpus proceedings, satisfy the United Kingdom's obligation under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) Cmd 8969) art 5(4) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 127) to permit a person who has been deprived of his liberty to have the lawfulness of his detention decided speedily by a court.

2 *Ex p Child* (1854) 15 CB 238; *Re Carter* (1893) 95 LT Jo 37, DC; and see para 231 post.

3 *R v Wright* (1760) 2 Burr 1099; *R v Turlington* (1761) 2 Burr 1115; *R v Riall* (1860) 11 ICLR 279.

4 *B v BHB Community Healthcare NHS Trust* [1999] 1 FLR 106, (1998) 47 BMLR 112, CA, doubting *Re S-C (Mental Patient: Habeas Corpus)* [1996] QB 599, [1996] 1 All ER 532, CA. As to judicial review see para 58 et seq ante.

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(iv) Purposes for which Habeas Corpus not Granted

227. Criminal cases.

In general the writ of habeas corpus will not be granted to persons committed for treason plainly expressed in the warrant of commitment or to persons convicted or in execution under legal process¹, including persons in execution of a legal sentence after conviction on indictment², or after conviction by a duly constituted court-martial the proceedings of which have been in due course confirmed by the competent authority³; or to an alien enemy who is a prisoner of war⁴; or to a party to a suit who is in lawful custody, to enable him to appear in

court for the purpose of arguing his case in person⁵, unless it appears that without his personal attendance substantial justice could not be done⁶.

1 Habeas Corpus Act 1679 s 2 (amended by the Criminal Law Act 1967 s 10(2), Sch 3 Pt III; the Courts Act 1971 s 56(1), Sch 8 Pt II para 4(1); and the Bail Act 1976 s 12, Sch 2 para 1).

2 *Ex p Lees* (1858) EB & E 828; see also 2 Roll Rep 138; 3 Bl Com (14th Edn) 130. See also *Re Featherstone* (1953) 37 Cr App Rep 146, DC, where Lord Goddard CJ said: 'probably the only case in which the court would grant habeas corpus would be if it were satisfied that the prisoner was being held after the terms of the sentence imposed on him had expired'.

Nevertheless as a concession the Divisional Court is prepared to consider any written statement by the prisoner setting out the grounds on which he considers that he is unlawfully detained and sent by letter to the Master of the Administrative Court: *Re Wring, Re Cook* [1960] 1 All ER 536n, [1960] 1 WLR 138, DC. If the court considers that he has an arguable point, the court will arrange for the Official Solicitor to instruct counsel to make a formal application under the CPR on the prisoner's behalf: *Re Wring, Re Cook* supra. Prisoners will not be permitted to make such an informal approach more than once: *Re Wring, Re Cook* supra. As to the CPR see para 158 ante. As to the Official Solicitor see COURTS vol 10 (Reissue) para 667.

3 *R v Governor of Lewes Prison, ex p Doyle* [1917] 2 KB 254 at 274, DC, per Darling J; *R v Governor of Wormwood Scrubs Prison, ex p Boydell* [1948] 2 KB 193, [1948] 1 All ER 438, DC; *R v Secretary of State for War, ex p Martyn* [1949] 1 All ER 242, DC; *R v Officer Commanding Depot Battalion, RASC Colchester, ex p Elliott* [1949] 1 All ER 373, DC. In the last named case the court held that if a person is arrested abroad and is brought before a court in this country charged with an offence which that court has jurisdiction to hear, the court has no power, once that person is in lawful custody in this country, to go into the question of the circumstances in which he may have been brought there. See also *R v Plymouth Justices, ex p Driver* [1986] QB 95, [1985] 2 All ER 681, DC, where the Divisional Court followed *R v Officer Commanding Depot Battalion, RASC Colchester, ex p Elliott* supra and declined to follow *R v Hartley* [1978] 2 NZLR 199; *R v Bow Street Magistrates, ex p Mackeson* (1981) 75 Cr App Rep 24, DC; and *R v Guildford Magistrates' Court, ex p Healey* [1983] 1 WLR 108, DC. If, however, in military proceedings there has been such delay in bringing a man to trial as to amount to oppression, the High Court on an application for habeas corpus can interfere and admit him to bail.

4 *Three Spanish Sailors' Case* (1779) 2 Wm Bl 1324 (where it was held that three Spanish seamen, being on their own showing alien enemies and prisoners of war, were not entitled to be set at liberty by habeas corpus; it was said that no habeas corpus lies for an alien enemy prisoner of war, however ill-used or deceived); *R v Schiever* (1759) 2 Burr 765 (where application was made for a writ of habeas corpus on behalf of a Swedish national who had been taken prisoner of war on board an enemy's ship and was alleged to have been forced into the enemy's service; it was held that habeas corpus did not lie to remove prisoners of war, and that the fact that the prisoner was a subject of a nation not at war did not alter the case); *R v Vine Street Police Station Superintendent, ex p Liebmann* [1916] 1 KB 268, DC (where it was held that an alien enemy resident in the United Kingdom, who, in the opinion of the Executive is a person hostile to the welfare of the country and is on that account interned, is a prisoner of war, although not a combatant or a spy); *R v Commandant of Knockaloe Camp, ex p Forman* (1917) 87 LJB 43, DC; and see the cases cited in para 209 note 4 ante. See also BRITISH NATIONALITY AND IMMIGRATION vol 4(2) (2002 Reissue) para 13; WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 574 et seq.

5 Where a married woman who was in Holloway Gaol under a sentence of six months' imprisonment for libel applied for a habeas corpus to enable her to appear in court to argue in person a rule for a new trial, Pollock B, in chambers, refused to grant the writ, and an appeal from his decision was dismissed: *Weldon v Neal* (1885) 15 QBD 471, DC. See also *Ford v Nassau* (1842) 9 M & W 793 (habeas corpus not granted to enable prisoner to move to set aside writ of attachment on which he was in custody); *Newton v Askew* (1848) 6 Hare 319; *Benns v Mosley and Cobbett* (1857) 2 CBNS 116.

6 *Clark v Smith* (1847) 3 CB 982 at 984; *Ex p Cobbett* (1858) 3 H & N 155; cf *A-G v Hunt* (1821) 9 Price 147.

UPDATE

227 Criminal cases

NOTE 1--Habeas Corpus Act 1679 s 2 further amended: Constitutional Reform Act 2005 Sch 4 para 4.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(1) THE WRIT OF HABEAS CORPUS AD SUBJICIENDUM/(iv) Purposes for which Habeas Corpus not Granted/228. Reviewing decision.

228. Reviewing decision.

The writ of habeas corpus will not be granted where the effect of it would be to review the judgment of one of the superior courts which might have been reviewed on appeal¹ or to question the decision of an inferior court or tribunal on a matter within its jurisdiction²; or where it would falsify the record of a court which shows jurisdiction on the face of it³. However, in cases relating to extradition and the return of fugitive offenders, it has been held that there is power in the superior court to review the case as it appeared before the magistrate, not only to look at the evidence before the magistrate, but to consider whether any magistrate, properly applying his mind to the question, could reasonably have come to the conclusion that a strong and probable presumption of guilt had been made out which would justify the magistrate in making the committal order⁴.

It has been suggested that habeas corpus may not be used to challenge the legality of an administrative decision underlying an individual's detention: the appropriate application for such a challenge is judicial review; habeas corpus seeks to challenge a detention which depends upon the existence of certain precedent facts and it is said that those facts do not exist⁵. However, this approach has been distinguished⁶ and criticised⁷.

1 *Ex p Corke* [1954] 2 All ER 440, [1954] 1 WLR 899, DC; *Re Featherstone* (1953) 37 Cr App Rep 146, DC; *Re Wring*, *Re Cook* [1960] 1 All ER 536n, [1960] 1 WLR 138, DC; *Re Philpot* [1960] 1 All ER 165, [1960] 1 WLR 115, DC; *Ex p Hinds* [1961] 1 All ER 707, [1961] 1 WLR 325, DC. See also *Re Dunn* (1847) 17 LJCP 97 (writ of error). As to the superior courts see COURTS.

The writ does not lie in respect of a person who is committed by a court of record for contempt so as to test whether the power of committal has been properly exercised: see *Re Hunt* [1959] 1 QB 378 at 383, [1959] 1 All ER 73 at 76, DC, per Lord Parker CJ; affd [1959] 2 QB 69, [1959] 2 All ER 252, CA. But see note 4 infra.

2 *R v Commanding Officer of Morn Hill Camp, ex p Ferguson* [1917] 1 KB 176, DC. The principles applicable in cases of certiorari (now known as a quashing order: see para 117 note 1 ante) apply in the case of habeas corpus: *R v Commanding Officer of Morn Hill Camp, ex p Ferguson* supra at 180 per Lord Reading CJ. See also *Re HK (an infant)* [1967] 2 QB 617, [1967] 1 All ER 226, DC. As to the inferior courts see COURTS vol 10 (Reissue) para 851 et seq.

3 See *Ex p Newton* (1855) 24 LJCP 148.

4 See eg *R v Governor of Brixton Prison, ex p Mourt Mehmet* [1962] 2 QB 1, [1962] 1 All ER 463, DC; *Schtraks v Israel* [1964] AC 556, [1962] 3 All ER 529, HL; *Armah v Government of Ghana* [1968] AC 192, [1966] 3 All ER 177, HL; *Union of India v Narang* [1978] AC 247, [1977] 2 All ER 348, HL; *Tarling v Government of Singapore* [1978] Crim LR 490, HL. But see *Germany v Sotiriadis* [1975] AC 1 at 30, [1974] 1 All ER 692 at 706, HL (where Lord Diplock stated that if upon a review of the evidence before the magistrates the court finds that there was no evidence to justify the committal, then, and only then, will the prisoner be discharged). See further paras 219-220 ante. The High Court has power to remit the matter to the magistrates' court where part of the basis for committal had been argued before the magistrate but not ruled on as the magistrate had erroneously considered it unnecessary: *O v Governor of Holloway Prison and United States Government* [2000] 1 FLR 147, [2000] Fam Law 10, DC.

5 *R v Secretary of State for the Home Department, ex p Muboyayi* [1992] QB 244 at 254-255, [1991] 4 All ER 72 at 78, CA, per Lord Donaldson MR; *R v Secretary of State for the Home Department, ex p Cheblak* [1991] 2 All ER 319 at 322-323, [1991] 1 WLR 890 at 894, CA, per Lord Donaldson MR; *R v Oldham Justices, ex p Cawley* [1996] 1 All ER 464 at 467, DC, per Simon Brown LJ.

6 *Re S-C (Mental Patient: Habeas Corpus)* [1996] QB 599 at 611, [1996] 1 All ER 532 at 541, CA, per Sir Thomas Bingham MR; *R v Central London County Court, ex p London* [1999] QB 1260 at 1275, [1999] 3 WLR 1 at 13, CA, per Stuart-Smith LJ.

⁷ See *Administrative Law: Judicial Review and Statutory Appeals* (Law Com no 226) (1993) para 11.10 et seq, relying in part upon *Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147, [1969] 1 All ER 208, HL.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(1) THE WRIT OF HABEAS CORPUS AD SUBJICIENDUM/(iv) Purposes for which Habeas Corpus not Granted/229. Contempt of Parliament.

229. Contempt of Parliament.

A member of the House of Commons committed by the House for breach of privilege cannot obtain his discharge during the session by means of habeas corpus¹.

Where a person who is not a member is committed by the House of Commons², or by the House of Lords³, for breach of privilege, the courts will not review the committal or grant a discharge on habeas corpus; for if the return shows that the committal was for contempt of either House, the courts have no power to investigate the alleged contempt⁴.

A person committed for contempt by order of either House may be discharged on habeas corpus after a dissolution or prorogation of Parliament⁵.

¹ *Earl of Shaftsbury's Case* (1677) 1 Mod Rep 144; *Brass Crosby's Case* (1771) 2 Wm Bl 754; *Burdett v Abbott* (1811) 14 East 1 at 149, 161; on appeal (1817) 5 Dow 165, HL.

² *Hobhouse's Case* (1820) 3 B & Ald 420.

³ *R v Flower* (1799) 8 Term Rep 314.

⁴ *Middlesex Sheriff's Case* (1840) 11 Ad & El 273 (a writ of habeas corpus was granted requiring the Sergeant-at-Arms of the House of Commons to bring before the court two persons who had been committed by the House; the return showed that the Sergeant-at-Arms detained the prisoners on a warrant directed to him by the Speaker, which set out that the prisoners 'having been guilty of a contempt and breach of the privileges of this House' were committed to the custody of the Sergeant-at-Arms; it was held that the warrant was not bad for omitting to state the grounds on which the parties had been adjudged guilty of contempt; that the Court of Queen's Bench could not inquire by affidavit into the merits of the commitment even if the case were within the Habeas Corpus Act 1816, although in affidavits on which the writ was issued it was sworn that the parties were in fact committed for executing process in obedience to rules of that court; and that the warrant was sufficiently certain). See also *Burdett v Abbott* (1811) 14 East 1; on appeal (1817) 5 Dow 165, HL; and paras 223 ante, 239 post. See also PARLIAMENT vol 34 (Reissue) paras 1009-1010.

⁵ *Streeter's Case* (1654) Sty 415; *Earl of Shaftsbury's Case* (1677) 1 Mod Rep 144; *Middlesex Sheriff's Case* (1840) 11 Ad & El 273. As to dissolution or prorogation of Parliament see PARLIAMENT vol 34 (Reissue) para 720 et seq.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(2) PROCEDURE ON HABEAS CORPUS/(i) Application for the Writ/230. Who is entitled to apply for writ.

(2) PROCEDURE ON HABEAS CORPUS

(i) Application for the Writ

230. Who is entitled to apply for writ.

The person illegally imprisoned or detained in confinement without legal justification is, both at common law and by statute¹, entitled to apply for a writ of habeas corpus, but it is not essential that the application should proceed directly from him.

Any person may, on behalf of the person illegally imprisoned or detained, institute proceedings to obtain a writ of habeas corpus for the purpose of liberating another from an illegal imprisonment, and any person who is legally entitled to the custody of another may apply for the writ in order to regain that custody². In any case where access is denied to a person alleged to be unjustifiably detained, so that there are no instructions from the prisoner, the application may be made by any relation or friend on an affidavit setting forth the reasons for its being made³.

A mere stranger or volunteer, however, who has no authority to appear on behalf of a prisoner or right to represent him will not, it seems, be allowed to apply for habeas corpus⁴.

1 See paras 212-213 ante.

2 See the Habeas Corpus Act 1679 s 2 (amended by the Criminal Law Act 1967 s 10(2), Sch 3 Pt III; the Courts Act 1971 s 56(1), Sch 8 Pt II para 4(1); and the Bail Act 1976 s 12, Sch 2 para 1). For examples of applications made on behalf of detained persons see *R v Brooke and Fladgate*, *Gregory's Case* (1766) 4 Burr 1991 (husband on behalf of wife); *Cobbett v Hudson* (1850) 15 QB 988 (wife on behalf of husband); *Ex p Hinds* [1961] 1 All ER 707, [1961] 1 WLR 325, DC (wife on behalf of husband); *Re Thompson* (1860) 30 LJMC 19 (father on behalf of son); *Re Daley* (1860) 2 F & F 258 (application by sister of orphan girl under 14); cf *R v Clarke* (1758) 1 Burr 606.

An application for the writ may be made by an agent or friend on behalf of a prisoner: see *Ashby v White* (1703) 14 State Tr 695 at 825, 4th Resolution, HL; but see notes 3-4 infra.

In cases where the custody of children is in dispute the proper party to make the application for the writ is normally the parent or guardian who claims to be entitled to the custody, and it must be shown that the applicant prima facie possesses a legal right to the custody: see *Re Harper* [1895] 2 IR 571. Application may be made, however, by a local authority which has boarded out a child whom it received into its care in the exercise of statutory powers: see *Re AB (an infant)* [1954] 2 QB 385, [1954] 2 All ER 287, DC; *Re M (an infant)* [1961] Ch 81, [1961] 1 All ER 201; on appeal [1961] Ch 328, [1961] 1 All ER 788, CA.

3 See *Hottentot Venus' Case* (1810) 13 East 195; and *Re Ning Yi-Ching* (1939) 56 TLR 3.

4 In the absence of evidence showing that the person detained was unable to make the application, a mere stranger acting without authority was held not to be entitled to make an application for habeas corpus on behalf of a person who was alleged to be wrongfully detained as a person suffering from mental disorder: *Ex p Child* (1854) 15 CB 238; see also *R v Clarke* (1762) 3 Burr 1362; *Re Carter* (1893) 95 LT Jo 37, DC. A mere stranger, it has been said, has no right to come to the court and ask that a party who gives no evidence, and who is not suggested to be so coerced as to be incapable of making one, may be brought up by habeas corpus to be discharged from restraint: *Ex p Child* supra at 239 per Jervis CJ. However, in *Re Klimowicz* (31 July 1954, unreported), the writ was granted, on the application of the Home Secretary, directed to the master of a Polish ship lying in the Thames on which a person seeking political asylum in the United Kingdom was being detained.

UPDATE

230 Who is entitled to apply for writ

NOTE 2--Habeas Corpus Act 1679 s 2 further amended: Constitutional Reform Act 2005 Sch 4 para 4.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(2) PROCEDURE ON HABEAS CORPUS/(i) Application for the Writ/231. Without notice application for writ of habeas corpus.

231. Without notice application for writ of habeas corpus.

Save in relation to applications by parents or guardians of children¹, an application for a writ of habeas corpus ad subjiciendum must be made to a judge in court², except that: (1) if the court so directs, it must be made to a Divisional Court of the Queen's Bench Division³; (2) where there is no judge sitting in court, it may be made to a judge otherwise than in court⁴; and (3) if the application is on behalf of a child, it must be made in the first instance to a judge otherwise than in court⁵.

The application may be made without notice being served on any other party⁶, and must be supported by a witness statement or affidavit⁷ by the person restrained showing that it is made at his instance and setting out the nature of the restraint⁸. However, where the person restrained is unable for any reason to make this witness statement or affidavit, it may be made by some other person on his behalf⁹. Such an affidavit must state that the person restrained is unable to make the witness statement or affidavit himself, giving the reason¹⁰.

The application should, as a rule, be made by counsel or solicitor advocate¹¹, but a litigant in person may in cases of urgency be allowed to apply¹². An application for habeas corpus has virtually absolute priority over all other court business¹³.

On the application for the writ, the applicant will not, in general, be allowed to raise any issue or question or adduce any fresh evidence on a matter which he could have, but did not, raise or adduce before any court which ordered his detention¹⁴.

Without prejudice to the other powers of the court or judge hearing an application for a writ of habeas corpus¹⁵, the court or judge hearing an application may in its or his discretion order that the person restrained be released¹⁶. Such an order will be a sufficient warrant to any governor of a prison, constable or other person for the release of the person under restraint¹⁷. However, where such an application in criminal proceedings is heard by a judge and the judge does not order the release of the person restrained, he must direct that the application be made by claim form to a Divisional Court of the Queen's Bench Division¹⁸: a judge has no right simply to reject an application for the writ in a criminal cause or matter.

A second or renewed application, still less successive applications¹⁹, for a writ of habeas corpus, whether criminal or civil, will not be allowed to be made by or in respect of the same person on the same grounds, and whether to the same or any other court or judge, unless fresh evidence is adduced in support of any renewed application²⁰.

1 An application by a parent or guardian of a child for a writ of habeas corpus ad subjiciendum relative to the custody, care or control of the child must be made in the Family Division: CPR Sch 1 RSC Ord 54 r 11. See the Administration of Justice Act 1970 s 1(2), Sch 1 (repealed) (which assigned such applications to the Family Division); and COURTS. Although these provisions were repealed by the Supreme Court Act 1981 (see s 152(4), Sch 7), the rule itself remains in force. The whole of CPR Sch 1 RSC Ord 54 applies to such an application with the appropriate modifications: CPR Sch 1 RSC Ord 54 r 11. Thus the court or judge to whom a without notice application for the writ is made may direct that the application be made by claim form to a Divisional Court of the Family Division: cf CPR Sch 1 RSC Ord 54 r 2(1)(a), (b). As to the CPR see para 158 ante.

2 CPR Sch 1 RSC Ord 54 r 1(1). Because it touches the liberty of the subject, the practice is firmly established that an application for a writ of habeas corpus is entitled to be treated as urgent business and will be given precedence over all other proceedings before the court or judge on the day on which it is made. The application must be made to a judge of the High Court and not to the Court of Appeal, which has no original jurisdiction in the matter, and not even to a High Court judge sitting in the Court of Appeal: see *Ex p Le Gros* (1914) 30 TLR 249, CA; *Re Mayne, Stoneham v Woods* [1914] WN 202; *Re Carroll* [1931] 1 KB 104, CA; *Ex p Chapple* (1950) 66 (pt 2) TLR 932, CA. The Lord Chancellor has no original jurisdiction to grant a writ of habeas corpus: Administration of Justice Act 1960 s 14(2); *Re Kray, Re Kray, Re Smith* [1965] Ch 736, [1965] 1 All ER

710. As to the Lord Chancellor see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 477 et seq. It seems that an application for a writ of habeas corpus can be made at any time and on any day, even if it is a Sunday (and thus *dies non juridicus*): see *Re N (Infants)* [1967] Ch 512, [1967] 1 All ER 161 (Stamp J held that an interim injunction granted on a Sunday was valid, basing himself partly on the proposition that the writ of habeas corpus could be issued at any time taken from *Crowley's Case* (1818) 2 Swan 1 at 48 per Lord Eldon, quoting from Lord Coke's writing in Second Institutes 53 on Magna Carta). As to the weight to be given to cases concerning matters of civil procedure decided before 26 April 1999 (ie the date on which the CPR came into force) see para 158 ante.

3 CPR Sch 1 RSC Ord 54 r 1(1)(a).

4 CPR Sch 1 RSC Ord 54 r 1(1)(b); and see the Habeas Corpus Act 1679 s 2 (amended by the Criminal Law Act 1967 s 10(2), Sch 3 Pt III; the Courts Act 1971 s 56(1), Sch 8 Pt II para 4(1); and the Bail Act 1976 s 12, Sch 2 para 1); and the Habeas Corpus Act 1816 s 1 (amended by the Statute Law Revision Act 1948; and the Statute Law (Repeals) Act 1981). In any case where he deems it expedient, the judge may, however, adjourn the hearing of the application into court. In practice this course is adopted where novel or difficult points of law are involved.

In practice an application to a judge sitting otherwise than in court is normally made to a judge sitting in chambers at the Royal Courts of Justice in London, but, there being no restriction as to place, a judge in cases of emergency not infrequently hears an application at his own private residence or at any place where he happens to be.

5 CPR Sch 1 RSC Ord 54 r 1(1)(c). See *Re Buswell* (1919) 63 Sol Jo 835.

6 CPR Sch 1 RSC Ord 54 r 1(2). In this respect the practice reverts to what it had been until about 1780. The application for the writ need not be made in the name of the person restrained, but may be made by any other person at his instance or by a person entitled to his custody or, where no communication with him is possible, by a relative, a friend or other person having an interest in the matter: see para 230 ante. See, however, *Ex p Child* (1854) 15 CB 238.

7 The Habeas Corpus Act 1816 s 1 (as amended) requires any application under that Act to be supported by affidavit; applications under that Act could not, therefore, be supported by witness statement: see CPR 32.15(1).

8 CPR Sch 1 RSC Ord 54 r 1(2). A copy of the supporting witness statement or affidavit, together with copies of any exhibits to it, is required for the judge's use and should be lodged, if possible, the day before the application is made. If the application is made to the Divisional Court, three copies will be required. The writ was formerly granted on a mere verbal application without an affidavit: see *R v Heath* (1744) 18 State Tr 1 at 19 per Marley CJ of the King's Bench in Ireland.

9 CPR Sch 1 RSC Ord 54 r 1(3). The witness statement or affidavit may not be made by another person against the wishes or without the consent of the person restrained: *Zabrovsky v General Officer Commanding Palestine* [1947] AC 246, PC.

10 CPR Sch 1 RSC Ord 54 r 1(3).

11 See *Re Green* (1941) 57 TLR 533, DC, in which Humphreys J, reading the ruling of the court said: 'We think that no applicant for a writ of habeas corpus should be heard in person unless some sufficient ground is shown for a departure from established practice; and the mere fact that an applicant prefers to act as his own advocate should not be regarded as good ground'. See also *Re Wring*, *Re Cook* [1960] 1 All ER 536n, [1960] 1 WLR 138, DC (a prisoner is not to be produced for the purpose of making an application in person unless the court so directs).

If made in chambers the application may be made by a solicitor.

12 See *Re Newton* (1855) 16 CB 97 (where, although the court refused to hear an application by a father for a writ on behalf of his son, it was stated by Jervis CJ that the judges did not lay down any inflexible rule, but merely held that in the particular circumstances it would be better for the application to be made by counsel); *Cobbett v Hudson* (1850) 15 QB 988 (where a wife was allowed to move in person for habeas corpus on behalf of her husband, and Lord Campbell CJ pointed out 'that great inconvenience might arise in cases where the liberty of the subject is in question from refusing to hear the wife or any person on behalf of the party under restraint'); *Re Hunt* [1959] 1 QB 378, [1959] 1 All ER 73, DC (applicant, who had been committed for contempt, permitted to appear in person); *Ex p Hinds* [1961] 1 All ER 707, [1961] 1 WLR 325, DC (only in exceptional circumstances will the court allow a wife to apply for habeas corpus on behalf of her husband).

13 See *R v Secretary of State for the Home Department, ex p Cheblak* [1991] 2 All ER 319 at 322, [1991] 1 WLR 890 at 894, CA, per Lord Donaldson MR.

14 See *Re Nobbs* [1978] 3 All ER 390, [1978] 1 WLR 1320, DC, where the applicant sought to allege for the first time that if he were sent back to the Republic of Ireland he would be prosecuted or detained for a political offence.

15 See CPR Sch 1 RSC Ord 54 r 2(1); and para 232 post.

16 CPR Sch 1 RSC Ord 54 r 4(1).

17 See CPR Sch 1 RSC Ord 54 r 4(1).

18 CPR Sch 1 RSC Ord 54 r 4(2). The application to a Divisional Court of the Queen's Bench Division must be made by claim form, using Form 87 modified in accordance with the guidance set out in the *Practice Direction--Forms* (2000) PD 4: *Practice Direction--Application for writ of habeas corpus* (2000) PD RSC 54 para 3.1(2). The application must be entered in the Administrative Court List in accordance with *Practice Direction (Crown Office List)* [1987] 1 All ER 368, [1987] 1 WLR 232: *Practice Direction--Application for writ of habeas corpus* (2000) PD RSC 54 para 6.1(2). The Administrative Court was formerly called the Crown Office List: see para 69 ante.

On a criminal application for habeas corpus, an order for the release of the person restrained can be refused only by a Queen's Bench Divisional Court, where the application is made in the first instance to such a court or to a single judge: see CPR Sch 1 RSC Ord 54 r 4(2) (continuing the rule formerly in the Administration of Justice Act 1960 s 14(1) (repealed)). See also para 247 note 3 post.

19 It had formerly been thought to be the law that, having regard to the crucial constitutional importance of the writ of habeas corpus in safeguarding the freedom of the person, a fresh application might be made to each court and judge in turn, and that each was bound to consider the question independently, without being influenced by previous decisions refusing to discharge the person restrained: see *Cox v Hakes* (1890) 15 App Cas 506 at 514, 523, 527, 543, HL. Such successive applications were not regarded as appeals (see *Cox v Hakes* supra at 523), although sometimes they were loosely so described (see *R v Secretary of State for Home Affairs, ex p O'Brien* [1923] 2 KB 361; on appeal sub nom *Secretary of State for Home Affairs v O'Brien* [1923] AC 603, HL). The continued existence of this right was affirmed in *Eshugbayi Eleko v Officer Administering the Government of Nigeria* [1928] AC 459, PC. However, the existence of the right came to be doubted, and the applicant was held to be entitled to go to one, and only one, High Court judge, whether in the Queen's Bench Division or any other Division, or only one court, and to have no right to make successive applications until he obtained his discharge or the issue of the writ: *Re Hastings (No 2)* [1959] 1 QB 358, [1958] 3 All ER 625; *Re Hastings (No 3)* [1959] Ch 368, [1959] 1 All ER 698, DC (on appeal [1959] 3 All ER 221, [1959] 1 WLR 807, CA); *Re Kray, Re Kray, Re Smith* [1965] Ch 736, [1965] 1 All ER 710. See also *Re Tarling* [1979] 1 All ER 981 at 987, [1979] 1 WLR 1417 at 1422-1423, DC. Any doubt about the matter has now been resolved by statute: see the text and note 20 infra.

20 Administration of Justice Act 1960 s 14(2). On a renewed application, the 'fresh evidence' which the applicant desires to adduce must not merely be additional to or different from that which was adduced on the initial application, but must be evidence which the applicant could not have, or could not reasonably be expected to have, put forward on the initial application: *Re Tarling* [1979] 1 All ER 981, [1979] 1 WLR 1417, DC. See also *R v Governor of Winson Green Prison, Birmingham, ex p Littlejohn* [1975] 3 All ER 208, [1975] 1 WLR 893, DC.

In *R v Governor of Brixton Prison, ex p Osman (No 3)* [1992] 1 All ER 122, [1992] 1 WLR 36, DC, it was held that there was no abuse of process where the applicant raised an argument which could have been raised at an earlier hearing but which had not been because of arguable, though erroneous, advice. However, in *R v Governor of Brixton Prison, ex p Osman (No 4)* [1992] 1 All ER 579, Independent, 26 November, DC, the court ruled that the Administration of Justice Act 1960 s 14(2) did not exclude the court's inherent jurisdiction to control its own procedures to prevent them from being used vexatiously or in a manner which amounted to an abuse of process; in such cases the court had the right to strike out the proceedings.

The provisions of the Administration of Justice Act 1960 s 14(2) do not affect the law as to what evidence is admissible on an application for habeas corpus in extradition proceedings: *Ex p Schtraks* [1964] 1 QB 191, [1962] 3 All ER 849, DC. See further paras 219-220 ante; and EXTRADITION vol 17(2) (Reissue) para 1224.

UPDATE

231 Without notice application for writ of habeas corpus

NOTE 1--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

NOTE 4--Habeas Corpus Act 1679 s 2 further amended: 2005 Act Sch 4 para 4.

NOTE 18--*Practice Direction--Forms* (2000) PD 4 amended. As to the current listing policy of the Administrative Court see *Practice Statement* [2002] 1 All ER 633.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(2) PROCEDURE ON HABEAS CORPUS/(i) Application for the Writ/232. Powers of court or judge hearing without notice application for writ of habeas corpus.

232. Powers of court or judge hearing without notice application for writ of habeas corpus.

The court or judge to whom an application without notice for a writ of habeas corpus ad subjiciendum is made may make an order forthwith for the writ to issue¹, but if such an order is not made, the court or judge may exercise the following powers:

- (1) where the application is made to a judge otherwise than in court, he may direct that a claim form² for the writ be issued or that an application for the writ be made by claim form to a Divisional Court or to a judge in court³;
- (2) where the application is made to a judge in court, he may adjourn the application so that notice of it may be given, or may direct that an application be made by claim form⁴ to a Divisional Court⁵;
- (3) where the application is made to a Divisional Court, it may adjourn the application so that notice of it⁶ may be given⁷.

The claim form must be entered in the Administrative Court List⁸ and must be served on the person against whom the issue of the writ is sought⁹. The court or judge has power to direct service on other persons¹⁰. Unless the court or judge otherwise directs there must be at least eight clear days between the service of the claim form and the date named in it for the hearing of the application¹¹.

Every party to an application for a writ of habeas corpus must supply to every other party on demand and on payment of the proper charges copies of the witness statements or affidavits which he proposes to use at the hearing of the application¹².

1 CPR Sch 1 RSC Ord 54 r 2(1). As to the CPR see para 158 ante. By its very nature this power will only be exercised where the facts and law are clear or in a plain and obvious case, or where there is a likelihood that delay will defeat the ends of justice. For an example of such an order see *Re B (a prisoner)* [1972] NZLR 897 (habeas corpus ordered on ex parte (now without notice) application because the case was clear). See also *Ex p Witte* (1853) 13 CB 680. However, the exercise of the power is not the equivalent of an order for the release of the person restrained, which the court or judge has power to make under CPR Sch 1 RSC Ord 54 r 4(1) (see para 231 ante), and although the court or judge has power to admit the person restrained to bail, the court's jurisdiction under the habeas corpus proceedings remains unaffected: see *Re Amand* [1941] 2 KB 239 at 249, DC, per Viscount Caldecote CJ. As to the weight to be given to cases concerning matters of civil procedure decided before 26 April 1999 (ie the date on which the CPR came into force) see para 158 ante.

2 The claim form must be in Form 87 modified in accordance with the guidance set out in the *Practice Direction--Forms* (2000) PD 4: *Practice Direction--Application for writ of habeas corpus* (2000) PD RSC 54 para 3.1(2).

3 CPR Sch 1 RSC Ord 54 r 2(1)(a).

4 As to the required form of claim form see note 2 supra.

5 CPR Sch 1 RSC Ord 54 r 2(1)(b).

6 The notice must be in the Form 88: *Practice Direction--Application for writ of habeas corpus* (2000) PD RSC 54 para 4.1.

7 CPR Sch 1 RSC Ord 54 r 2(1)(c).

8 le in accordance with *Practice Direction (Crown Office List)* [1987] 1 All ER 368, [1987] 1 WLR 232: see CPR Sch 1 RSC Ord 54 PD para 6.1(1). The Administrative Court was formerly called the Crown Office List: see para 69 ante.

9 CPR Sch 1 RSC Ord 54 r 2(2). It should therefore be directed to the person having control of the body of the person restrained, eg to the prison governor rather than to the Secretary of State, although it may be directed to a person who has such control that he can order the person having the custody of the person restrained to release him: see *R v Earl of Crewe, ex p Sekgome* [1910] 2 KB 576 at 592, CA, per Vaughan Williams LJ; *Re Mwenya* [1960] 1 QB 241 at 277, [1959] 3 All ER 525 at 542, DC, per Lord Parker CJ; and paras 208 note 8, 211 ante.

10 CPR Sch 1 RSC Ord 54 r 2(2). Thus the court or judge may direct service on any other person whom it or he considers interested or desires to hear, or may hear him without such a direction. Eg in extradition proceedings it may direct service on the requesting government: see *R v Governor of Brixton Prison, ex p Minervini* [1959] 1 QB 155, [1958] 3 All ER 318, DC. In immigration cases the court normally orders that the Secretary of State or the immigration officer is to be served as well as the governor of the prison. It may also be appropriate to serve the tribunal which initiated, or which has refused to revoke the decision bringing about, the detention. Service may be directed to be effected on a corporation (see *Re Carroll (an infant)* [1931] 1 KB 317 at 363, CA, per Slessor LJ), although it would be equally effective if directed to be served on an officer of the corporation. It is the duty of applicants and their solicitors to effect proper service when ordered so to do: *R v Holmes, ex p Sherman* [1981] 2 All ER 612 at 613, DC, per Donaldson LJ.

11 CPR Sch 1 RSC Ord 54 r 2(2). The grounds of the application must be included in the notice of motion or summons: *R v Governor of Brixton Prison, ex p Shure* [1926] 1 KB 127, DC; *R v Governor of Brixton Prison, ex p Abdulla Kajee* (10 April 1946, unreported), cited in Griffiths' Guide to Crown Office Practice 103.

12 CPR Sch 1 RSC Ord 54 r 3. All affidavits must be filed in the Administrative Court or in the Principal Registry of the Family Division as appropriate: see *Practice Direction--Written Evidence* (2001) PD 32 para 23.1.

UPDATE

232 Powers of court or judge hearing without notice application for writ of habeas corpus

NOTE 2--*Practice Direction--Forms* (2000) PD 4 amended.

NOTE 8--As to the current listing policy of the Administrative Court see *Practice Statement* [2002] 1 All ER 633.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(2) PROCEDURE ON HABEAS CORPUS/(i) Application for the Writ/233. The hearing of the application.

233. The hearing of the application.

In recent years the practice has been for the court to dispose of the application on the adjourned hearing of the application for the writ rather than on the substantive hearing. Thus, on the hearing of an application for a writ of habeas corpus, the court or judge may, in its or his discretion, order that the person restrained be released, and the order is a sufficient warrant to any governor of a prison, constable or other person for the release of the person under restraint¹. In such cases the writ itself is not formally issued².

In habeas corpus proceedings, if the power to detain depends upon the precedent establishment of an objective fact, the court or judge will decide whether the fact exists³. The burden of proof rests on the applicant to show that there is a prima facie case that the detention is unlawful, and the burden then passes to the restraining body or person to show that the restraint is lawful⁴. The standard of proof required of the restraining body or person is the civil standard but, since grave issues of personal liberty are involved, the degree of probability required will be high⁵.

On the hearing of the adjourned application, it is not the practice for the person detained to be brought up before the court unless the court or judge who hears the without notice application has so directed, or the court or judge so orders in the course of the hearing.

Evidence is by witness statement or affidavit⁶, and the court has power to order the cross-examination of deponents⁷.

If the court or judge orders the writ of habeas corpus to issue, the order cannot be fettered by any conditions or terms⁸.

Where the writ is ordered to issue, the court or judge by whom the order is made must give directions as to the court or judge before whom, and the date on which, the writ is returnable⁹.

1 See CPR Sch 1 RSC Ord 54 r 4(1); and para 231 ante. See *R v Governor of Wormwood Scrubs Prison, ex p Boydell* [1948] 2 KB 193, [1948] 1 All ER 438, DC. As to the CPR see para 158 ante. As to the weight to be given to cases concerning matters of civil procedure decided before 26 April 1999 (ie the date on which the CPR came into force) see para 158 ante.

2 In this event the Master of the Administrative Court will write to, for example, the prison governor directing the discharge of the prisoner, and there will therefore be no need for the return to the writ to be made, or to show cause for the detention, but the fact of the release will have to be confirmed to the Master of the Administrative Court. Alternatively the restraining party may make a return to the writ which does not show the cause of the detainer, but merely the fact of release.

If, at the time of the application, the applicant is no longer in detention, no writ should be issued: *Re Nicola Raine* (1982) Times, 5 May, DC.

3 *Khawaja v Secretary of State for the Home Department* [1984] AC 74 at 104-105, [1983] 1 All ER 765 at 777, HL, per Lord Wilberforce and at 110 and 781 per Lord Scarman, where statements in *R v Secretary of State for the Home Department, ex p Hussain* [1978] 2 All ER 423, [1978] 1 WLR 700, DC, per Geoffrey Lane LJ, *R v Secretary of State for the Home Department, ex p Choudhary* [1978] 3 All ER 790, [1978] 1 WLR 1177, CA, and *Zamir v Secretary of State for the Home Department* [1980] AC 930, [1980] 2 All ER 768, HL, to the effect that a court should limit itself to considering whether the detaining authority had reasonable grounds for believing the fact existed, were disapproved. See also para 228 ante.

In determining whether it is satisfied that any relevant fact exists, the court is entitled to look at all the available material, including for example hearsay evidence: *R v Secretary of State for the Home Department, ex p Rahman* [1998] QB 136, [1997] 1 All ER 769, CA.

4 *Khawaja v Secretary of State for the Home Department* [1984] AC 74 at 101, [1983] 1 All ER 765 at 774-775, HL, per Lord Wilberforce, at 112 and 782-783 per Lord Scarman, and at 128 and 794-795 per Lord Templeman. See also *Re Hassan* [1976] 2 All ER 123, [1976] 1 WLR 971, DC; and para 236 note 7 post.

5 *Khawaja v Secretary of State for the Home Department* [1984] AC 74, [1983] 1 All ER 765, HL. Previously, the view had been expressed that the criminal standard of proof was appropriate in habeas corpus proceedings. See *Eshugbayi Eleko v Officer Administering the Government of Nigeria* [1931] AC 662, PC, per Lord Atkin.

6 Although where the application is under the Habeas Corpus Act 1816 see para 231 note 7 ante.

7 *Barnardo v Ford, Gossage's Case* [1892] AC 326 at 340, HL, per Lord Herschell; *Eshugbayi Eleko v Officer Administering the Government of Nigeria* [1931] AC 662 at 665, PC; *Khawaja v Secretary of State for the Home Department* [1984] AC 74, [1983] 1 All ER 765, HL. See also *Re Quigley* [1983] NI 245 (because of the importance of the court determining whether the liberty of the subject had been infringed, the judge himself may call a witness who has not been called by the parties). In the vast majority of cases, however, it is likely that evidence will be provided by witness statement or affidavit alone. See *Khawaja v Secretary of State for the*

Home Department supra at 124 and 792 per Lord Bridge of Harwich. Cross-examination may be ordered on the application of any party to the proceedings: CPR r 32.7(1).

8 See para 235 post.

9 CPR Sch 1 RSC Ord 54 r 5.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(2) PROCEDURE ON HABEAS CORPUS/(ii) The Writ and Service of the Writ/234. Form of writ.

(ii) The Writ and Service of the Writ

234. Form of writ.

The writ of habeas corpus consists of a mandatory order by the court or judge directed to any person who is alleged to have another person unlawfully in his custody, requiring him to have the body of such person before the court or judge immediately after the receipt of the writ, together with the day and cause of his being taken and detained, to undergo and receive all such things as the court may order¹.

The writ must be directed to the person or persons in whose custody the party detained is or is alleged to be, as for instance to the prison governor in the case of a person in custody in prison². It may be directed to any number of individuals taking part in the illegal detention³; but if directed to two or more persons in the alternative, the writ is bad and will be quashed⁴. Where the writ is issued against a corporation, it should be directed to an officer of the corporation and not to the corporation in its corporate name⁵.

The writ must be in the prescribed form⁶. It must be prepared by the party seeking to issue it⁷, it must bear the date on which it is issued⁸ and should be indorsed 'By Order of the Court', or 'By Order of Mr Justice ...', as the case may be⁹.

1 'The writ is a demand by the King's Supreme Court of Justice to produce a person under confinement, and to signify the reason of his confinement': Wilm 106; see also 3 Bl Com (14th Edn) 129. As to the form of the writ see note 6 infra. In practice, an application for habeas corpus is usually disposed of at the hearing of the application for the writ. If an order is made for the person detained to be released, he will normally be released forthwith without the need for a writ to issue: see para 233 ante.

2 *R v Fowler* (1700) 1 Salk 350; *R v Batcheldor* (1839) 1 Per & Dav 516 (where 12 writs of habeas corpus were granted directed to 'William Batcheldor, keeper of the gaol of the borough of Liverpool'). See para 232 notes 10-11 ante.

3 *Re Douglas* (1842) 3 QB 825 (where a writ of habeas corpus was directed 'to Lieutenant Colonel Hay, and to any and every officer and officers, and person or persons, having the custody of Captain Archibald Douglas'); *Carus Wilson's Case* (1845) 7 QB 984 (where the writ was directed 'to John Kandich, gaoler of Her Majesty's gaol in Jersey and to John Le Couteur, Viscount of the said island').

4 See the cases cited in note 2 supra.

5 *Re Carroll (an infant)* [1931] 1 KB 317 at 363-364, CA, per Slesser LJ.

6 CPR Sch 1 RSC Ord 54 r 10. For forms of writs in habeas corpus proceedings see Forms 89 (ad subjiciendum), 91 (ad testificandum), 92 (ad respondendum). As to the CPR see para 158 ante. If the writ is issued under the Habeas Corpus Act 1679, it must be indorsed 'Per statutum tricesimo primo Caroli secundi regis', and must be signed by the person who awards the same: Habeas Corpus Act 1679 s 2. This is an express requirement of the provision: *R v Roddam* (1777) 2 Cowp 672. In modern practice writs of habeas corpus are almost invariably issued at common law and not under the Habeas Corpus Act 1679, but if a writ were issued

under the Act it should be indorsed as required by the statute. Every writ of habeas corpus which is not so indorsed is a writ of habeas corpus at common law: *Brass Crosby's Case* (1771) 3 Wils 188 at 198 per De Grey CJ; *Hobhouse's Case* (1820) 3 B & Ald 420 at 423 per Holroyd J. As to the Habeas Corpus Act 1679 see para 213 ante.

7 See CPR 7.2(1).

8 As to obtaining leave to amend the date on which the writ was tested see *Ex p Davies* (1837) 4 Bing NC 17; and as to waiving the irregularity of testing the writ on a day other than that on which it was issued see *Newton v Rowe* (1843) 13 LJCP 73.

9 Formerly it was essential to the validity of a writ of habeas corpus that the signature of the judge who granted it should be indorsed, and in the absence of such signature the writ need not have been obeyed: *R v Roddam* (1777) 2 Cowp 672.

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235. Issue and service of writ of habeas corpus.

The court or judge by whom an order is made for the issue of a writ of habeas corpus ad subjiciendum¹ must give directions as to the court or judge before whom, and the date on which, the writ is returnable².

When made, the order for the writ to issue cannot be fettered by any conditions or terms. Thus, if the writ is granted on the ground of illegal imprisonment, a condition or term restraining the applicant from pursuing his remedy by action for false imprisonment cannot be imposed as part of the order for the issue of the writ³, and the writ cannot be ordered to lie in the office until the respondent comes within the jurisdiction⁴, or until some future date.

Writs of habeas corpus are issued out of the Administrative Court⁵ or the Principal Registry of the Family Division⁶, as the circumstances require, on production of the sealed copy order for the writ and taxing master's certificate. Every writ must be filed in the Administrative Court or Principal Registry of the Family Division, as appropriate, together with the return to it and a copy of any order made on it⁷.

The writ must normally be served personally on the person to whom it is directed⁸, but if it is not possible to serve it personally, or if the writ is directed to a prison governor or other public official, it must be served by leaving it with a servant or agent of the person to whom it is directed at the place where the person restrained is confined or restrained⁹.

There must be served with the writ a notice¹⁰ stating the court or judge before whom and the date on which the person restrained is to be brought and that, in default of obedience, proceedings for committal of the party disobeying will be taken¹¹.

When it is possible to effect personal service, a writ of habeas corpus can only be properly served by actually delivering the original writ to the person to be served, and if a copy of the writ is served, this is an irregularity which the person served cannot waive by acknowledging service so as to render himself liable to committal for disobedience to the writ¹².

1 As to the form of the order and the writ see para 234 ante.

2 CPR Sch 1 RSC Ord 54 r 5. As to the CPR see para 158 ante. The former provision that the writ is to be returnable immediately (see the Rules of the Supreme Court 1883 Ord LIX r 20 (revoked)) has not been reproduced, but no doubt its spirit will continue to be followed. The party seeking the writ must serve: (1) the claim form in accordance with CPR Sch 1 RSC Ord 54 r 2(2) (see para 232 ante); and (2) the writ of habeas

corpus and notice in Form 90, as modified, in accordance with CPR Sch 1 RSC Ord 54 r 6 (see the text and notes 8-9 infra): CPR Sch 1 RSC Ord 54 PD para 5.1.

3 *Ex p Hill* (1827) 3 C & P 225. As to the weight to be given to cases concerning matters of civil procedure decided before 26 April 1999 (ie the date on which the CPR came into force) see para 158 ante.

4 *R v Pinckney* [1904] 2 KB 84, CA.

5 The practice described in the text was formerly governed by CPR Sch 1 RSC Ord 57 r 5(1) (revoked by SI 2000/2092) and it appears that the practice is still being observed.

6 See note 5 supra. The writ must be issued out of the Principal Registry of the Family Division in cases relating to the custody, care or control of minors: see para 231 ante.

7 The practice described in the text was formerly governed by CPR Sch 1 RSC Ord 57 r 5(2) (revoked by SI 2000/2092) and it appears that the practice is still being observed.

8 CPR Sch 1 RSC Ord 54 r 6(1). As to personal service see CIVIL PROCEDURE vol 11 (2009) PARA 142. It is the duty of applicants and their solicitors to effect proper service when ordered so to do: *R v Holmes, ex p Sherman* [1981] 2 All ER 612 at 613, DC, per Donaldson LJ.

9 CPR Sch 1 RSC Ord 54 r 6(2). If the writ is directed to more than one person, it must be served personally or as directed by CPR Sch 1 RSC Ord 54 r 6(2) on the person first named in it, and copies must be served on each of the other persons in the same manner as the writ: CPR Sch 1 RSC Ord 54 r 6(3).

10 The notice must be in Form 90.

11 CPR Sch 1 RSC Ord 54 r 6(4). If the respondent does not appear or the body of the person restrained is not produced, application may be made to the court or judge for committal for contempt of court (*Re Thompson, R v Woodward* (1889) 5 TLR 565 and 601, DC) or for the issue of a bench warrant. The application must be supported by an affidavit proving due service of the writ and disobedience to it. See further para 246 post. As to contempt of court see CONTEMPT OF COURT.

12 See *R v Rowe* (1894) 71 LT 578. In the event of the original writ being inadvertently lost before service, it would seem that a new writ would be allowed to issue: see *Pease v Shrimpton* (1651) Sty 261.

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(iii) The Return to the Writ

236. Return to the writ of habeas corpus.

In compliance with the mandatory directions contained in the writ of habeas corpus, the person to whom it is directed is under a legal obligation to produce the body of the person alleged to be unlawfully detained before the court on the day specified¹ and to make a formal return to the writ². The return to a writ of habeas corpus ad subjiciendum is a document which must be indorsed on or annexed to the writ and must state all the causes of the detainer of the person restrained³. The court has power to examine and to inquire into the truth of the facts stated in the return⁴ and this it will do by witness statement or affidavit evidence⁵, but in so doing the court does not act as a court of appeal⁶.

Even if the return to the writ on its face shows a valid, lawful authority for the detention, the burden is on the restraining authority to show the validity of the detention, once the applicant has made out a prima facie case of invalidity⁷.

The return may be amended, or another return substituted for it by permission of the court or judge before whom the writ is returnable⁸.

When a return to a writ is made, the return must first be read, and then motion is made for discharging or remanding the person restrained or for amending or quashing the return, and where that person is brought up in accordance with the writ, his counsel will be heard first, then counsel for the Crown and then one counsel for the person restrained in reply⁹.

1 Ie as ordered by the court or judge pursuant to CPR Sch 1 RSC Ord 54 r 5: see para 235 ante. As to the CPR see para 158 ante.

2 *Anon* (1729) 1 Barn KB 151; *Darnel's Case* (1627) 3 State Tr 1 at 6; *Lilburn's Case* (1648) Sty 96; *R v Greenway* (1681) 2 Show 172. As to the weight to be given to cases concerning matters of civil procedure decided before 26 April 1999 (ie the date on which the CPR came into force) see para 158 ante.

3 CPR Sch 1 RSC Ord 54 r 7(1). The requirement that the return must state all the causes of the detainer may have the effect of rendering insufficient a return which merely specifies that the detention is under a particular provision of a particular Act: see *Re Shahid Iqbal* [1979] QB 264, [1979] 1 All ER 675, DC. The return must set out the facts relied on as constituting a valid and sufficient ground for detention of the person alleged to be illegally detained: see *Deybel's Case* (1821) 4 B & Ald 243; *Souden's Case* (1821) 4 B & Ald 294; *Nash's Case* (1821) 4 B & Ald 295; *Watson's Case* (1839) 9 Ad & El 731. These facts must be set forth clearly, directly and with sufficient particularity: see *Bushell's Case* (1670) Vaugh 135; *Watson's Case* supra at 733-736; *Re Douglas* (1842) 3 QB 825; *Carus Wilson's Case* (1845) 7 QB 984 at 1002-1006. As to the sufficiency of a return to a writ of habeas corpus see further *Hewel's Case* (1587) 1 Leon 70; *Barnes' Case* (1619) 2 Roll Rep 157; *Kendal's Case* (1695) 5 Mod Rep 78; *Bushell's Case* supra at 137; *Hutchins v Player* (1663) O Bridg 272 at 276; *Warman's Case* (1778) 2 Wm Bl 1204; *Chaucey's Case* (1611) 12 Co Rep 82; *R v Bethel* (1695) 5 Mod Rep 19; *R v Winton* (1792) 5 Term Rep 89; *R v Suddis* (1801) 1 East 306; *Ex p Krans* (1823) 1 B & C 258; *Watson's Case* supra; *R v Richards* (1844) 5 QB 926; *Ex p Besset* (1844) 6 QB 481; *R v Mount* (1875) LR 6 PC 283 at 287; *Re Matthews* (1860) 12 ICLR 233 at 241; *R v Jackson* [1891] 1 QB 671 at 672, CA. The return must also be unambiguous: see *R v Roberts* (1860) 2 F & F 272; *Re Matthews* supra at 234.

4 Habeas Corpus Act 1816 s 3. The court is not restricted in its inquiry to examining merely the reasons for the detention given in the return, so that where the return at first appears to be valid on its face but is later found to contain some material error, the court may go behind the wording of the return and determine whether there were in truth and in fact good grounds for the applicant's detention: *Re Shahid Iqbal* [1979] QB 264, [1979] 1 All ER 675, DC; affd [1979] 1 All ER 685n, [1979] 1 WLR 425n, CA. See also *R v Board of Control, ex p Ruttly* [1956] 2 QB 109 at 124, [1956] 1 All ER 769 at 775, DC, per Lord Goddard CJ.

5 The court has power to order cross-examination of deponents: *Barnardo v Ford, Gossage's Case* [1892] AC 326 at 340, HL, per Lord Herschell; *Eshugbayi Eleko v Officer Administering the Government of Nigeria* [1931] AC 662 at 665, PC; *Khawaja v Secretary of State for the Home Department* [1984] AC 74, [1983] 1 All ER 765, HL. See also *Re Quigley* [1983] NI 245; and para 233 note 5 ante. In the vast majority of cases, however, it is likely that evidence will be provided by witness statement or affidavit alone. See *Khawaja v Secretary of State for the Home Department* supra at 124 and 792 per Lord Bridge of Harwich. Cross-examination may be ordered on the application of any party to the proceedings: CPR 32.7(1).

6 If the return states that the detainer is under an order or conviction of a judicial authority, the court will inquire whether there was any evidence to justify it. If there was, the order or conviction will not be disturbed, but, if there was not, the court can release the person restrained on habeas corpus or quash the order or conviction: see *R v Board of Control, ex p Ruttly* [1956] 2 QB 109, [1956] 1 All ER 769, DC.

7 *Khawaja v Secretary of State for the Home Department* [1984] AC 74 at 101, [1983] 1 All ER 765 at 774-775, HL, per Lord Wilberforce, at 112 and 782-783 per Lord Scarman, at 124 and 792 per Lord Bridge of Harwich, and at 128 and 794-795 per Lord Templeman. See also *R v Governor of Brixton Prison, ex p Ahsan* [1969] 2 QB 222, [1969] 2 All ER 347, DC. See also *Re Hassan* [1976] 2 All ER 123, [1976] 1 WLR 971, DC; *R v Secretary of State for the Home Department, ex p Choudhary* [1978] 3 All ER 790, [1978] 1 WLR 117, CA; *Re Quigley* [1983] NI 245.

The standard of proof is the civil standard but, since grave issues of personal liberty are involved, the degree of probability required is high: see *Khawaja v Secretary of State for the Home Department* supra. See further para 237 post.

8 CPR Sch 1 RSC Ord 54 r 7(2).

9 CPR Sch 1 RSC Ord 54 r 8. See also para 236 ante.

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237. Evidence to controvert return.

The facts set out in the return need not in the first instance be supported by witness statement; for until impeached they are to be regarded as true¹. Where, however, there is ambiguity on the face of the return, the return is evasive and bad unless it is sufficiently explained and verified by witness statement or affidavit². Where the return is valid on its face, the applicant must establish a prima facie case that his detention is illegal and the onus then rests on the restraining authority to prove the legality of the detention³.

The truth of a return in criminal cases and in cases of imprisonment for debt or by process in any civil suit cannot, as a general rule, be traversed or impeached by witness evidence, although matters may be stated in confession and avoidance of the facts alleged in the return⁴. Thus, when the return states that the party who is alleged to be unlawfully detained is in execution after sentence on indictment on a criminal charge, the return cannot be controverted⁵.

In all other cases the judge is by statute empowered to inquire into the truth of the facts set forth in the return⁶. In such cases, although the return is good and sufficient in law, it is lawful for the judge before whom the writ may be returnable to proceed to examine the truth of the facts set forth in the return by affidavit⁷. If the writ is returned before a judge and it appears doubtful to him on such examination whether the material facts set forth in the return or any of them are true or not, he may admit to bail the person confined or restrained on recognisance to appear in court⁸. He is required to transmit into court the writ and return, together with such recognisance, and affidavits⁹. The court may then proceed to examine the truth of the facts set forth in the return in a summary way by affidavit or affirmation and may order the discharge, bail or remand of the party detained¹⁰.

Although the Habeas Corpus Act 1816 enables the return to be controverted, and a total absence of jurisdiction, or matter in excess of jurisdiction, may be alleged and proved by affidavit, facts alleged on the return which were within the jurisdiction of a court cannot be controverted¹¹.

1 *Watson's Case* (1839) 9 Ad & El 731.

2 *R v Roberts* (1860) 2 F & F 272.

3 *Khawaja v Secretary of State for the Home Department* [1984] AC 74, [1983] 1 All ER 765, HL; *R v Governor of Brixton Prison, ex p Ahsan* [1969] 2 QB 222, [1969] 2 All ER 347, DC; cf *Re Hassan* [1976] 2 All ER 123, [1976] 1 WLR 971, DC; *R v Secretary of State for Home Affairs, ex p Greene* [1942] 1 KB 87, [1941] 3 All ER 104, CA (affd sub nom *Greene v Secretary of State for Home Affairs* [1942] AC 284, [1941] 3 All ER 388, HL); and see *Eshugbayi Eleko v Officer Administering the Government of Nigeria* [1931] AC 662, PC; *Re Quigley* [1983] NI 245.

4 *Re Clarke* (1842) 2 QB 619; *R v Rogers* (1823) 3 Dow & Ry KB 607; *R v Dunn* (1840) 12 Ad & El 599; *Re Douglas* (1842) 3 QB 825; *R v Mallinson* (1851) 16 QB 367. It was formerly held that the return to habeas corpus could be traversed by plea: *De Vine's Case* (1456) cited in O Bridg 288.

5 *R v Suddis* (1801) 1 East 306; *Carus Wilson's Case* (1845) 7 QB 984 at 1008; *Ex p Lees* (1858) EB & E 828; but see *R v Board of Control, ex p Rutty* [1956] 2 QB 109, [1956] 1 All ER 769, DC. It would seem that witness evidence may be admissible to show that there was no jurisdiction in the court by which the prisoner was convicted: *Re Bailey* (1854) 3 E & B 607; *Re Baker* (1857) 2 H & N 219; *Re Authers* (1889) 22 QBD 345 at 350, DC; but see *Brenan and Galen's Case* (1847) 10 QB 492; *Re Newton* (1855) 16 CB 97; *Re Smith* (1858) 3 H & N 227 at 234 per Martin B (cases in which such evidence (by affidavit) was held not to be admissible).

For a false return an action lies at common law (*Re Clarke* (1842) 2 QB 619 at 635; *R v Rogers* (1823) 3 Dow & Ry KB 607); if it has been knowingly and intentionally made, it would seem that its truth may be controverted by witness evidence in committal proceedings or on a motion to quash the return (see *Watson's Case* (1839) 9 Ad & El 731 at 805 per Lord Denman CJ; cf *Re Crawford* (1849) 13 QB 613). As to unintentional misrepresentation see para 246 post.

6 Habeas Corpus Act 1816 ss 3, 4 (both amended by the Statute Law Revision Act 1888; Habeas Corpus Act 1816 s 3 further amended by the Statute Law (Repeals) Act 1981). The Habeas Corpus Act 1816 s 4 (as amended) applies to writs issued at common law: *Ex p Beeching* (1825) 4 B & C 136; *Re Quigley* [1983] NI 245.

7 Habeas Corpus Act 1816 s 3 (as amended: see note 6 supra); and see *R v Board of Control, ex p Rutty* [1956] 2 QB 109, [1956] 1 All ER 769, DC; *R v Governor of Brixton Prison, ex p Ahsan* [1969] 2 QB 222, [1969] 2 All ER 347, DC. As to the power of a superior court to review the decision of an inferior court on an application for habeas corpus see para 228 ante. As to superior and inferior courts see COURTS.

8 Habeas Corpus Act 1816 ss 3, 4 (as amended: see note 6 supra).

9 See *ibid* ss 3, 4 (as amended: see note 6 supra).

10 See *ibid* ss 3, 4 (as amended: see note 6 supra).

11 See *Carus Wilson's Case* (1845) 7 QB 984 at 1008 per Lord Denman CJ; *Re Clarke* (1842) 2 QB 619; *Re Thompson* (1860) 6 H & N 193; *Middlesex Sheriff's Case* (1840) 11 Ad & El 273. See also *Schtraks v Israel* [1964] AC 556, [1962] 3 All ER 529, HL, where it was held that the right and competence of a superior court to take cognisance of additional evidence was limited to cases where such evidence went to the question of the magistrate's jurisdiction at the date of the committal order. In the cases arising out of the Defence (General) Regulations 1939, SR & O 1939/927, reg 18B (now revoked), in the 1939-45 war, it was held that the court could not inquire into those matters in respect of which the Home Secretary stated that he had reasonable cause for belief: see eg *R v Secretary of State for Home Affairs, ex p Budd* [1942] 2 KB 14, [1942] 1 All ER 373, CA; *Greene v Secretary of State for Home Affairs* [1942] AC 284, [1941] 3 All ER 388, HL.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(2) PROCEDURE ON HABEAS CORPUS/(iii) The Return to the Writ/238. Time for return.

238. Time for return.

The return to a writ of habeas corpus must be made at the time specified in the notice which is served with the writ¹ and the court will not receive the return before the proper day for making the return has arrived².

A reasonable time, according to the circumstances of the particular case, is allowed for making the return to a writ issued at common law³. The time may be extended by the court where good cause is shown⁴.

1 As to the notice see para 235 ante.

2 *Mash's Case* (1772) 2 Wm Bl 805.

3 *Stockdale v Hansard* (1840) 8 Dowl 474. The preamble to the Habeas Corpus Act 1679 recited that great delays had been used in making returns to writs of habeas corpus in respect of persons committed for criminal or supposed criminal matters. To remedy this the statute enacted (see s 1) that in such instances the return should be made within three days after the service of the writ if the place where the prisoner is detained is within 20 miles from the court, and if beyond the distance of 20 miles and not above 100 miles, then within the space of ten days, and if beyond the distance of 100 miles, then within the space of 20 days after the delivery of the writ, and not longer. These statutory periods for making the return are, however, inapplicable in modern practice, as the writ is invariably issued at common law, and not under the statute.

The Habeas Corpus Act 1816 s 2 enacted that a writ of habeas corpus issued in vacation might be made returnable in court in the next term, and a writ issued in term might be made returnable in vacation before a

judge, where the writ was awarded too late in the term or vacation to be conveniently obeyed within the term or vacation respectively; and these provisions were made applicable to writs issued under the Habeas Corpus Act 1679: Habeas Corpus Act 1816 s 6. See also *R v Shebbeare* (1758) 1 Burr 460; *R v Mead* (1758) 1 Burr 542; *R v Clarke* (1758) 1 Burr 606.

4 *Barnardo v Ford, Gossage's Case* [1892] AC 326 at 341, HL, per Lord Macnaughten (where the time for making the return to the writ of habeas corpus was on appeal to the House of Lords extended to three months from the date of the judgment which affirmed the order appealed against); *R v Clarke* (1762) 3 Burr 1362 (where, on it appearing that the person confined was a lunatic, and was detained by relations who were proceeding in good faith to obtain a commission of lunacy, the period for the return to a writ of habeas corpus was extended); cf *Secretary of State for Home Affairs v O'Brien* [1923] AC 603, HL.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(2) PROCEDURE ON HABEAS CORPUS/(iii) The Return to the Writ/239. Committal for contempt a good return.

239. Committal for contempt a good return.

Committal for contempt by either House of Parliament constitutes a good return to a writ of habeas corpus¹.

Committal for contempt by a court of record affords a good return and a person so committed cannot obtain his discharge by habeas corpus² except where the commitment for contempt is bad in law³.

1 *Earl of Shaftsbury's Case* (1677) 1 Mod Rep 144; *Middlesex Sheriff's Case* (1840) 11 Ad & El 273; see also Hawk PC c 15, s 73n (where the early cases as to the power of Parliament to commit in execution for contempt of privilege are collected). As to habeas corpus for the discharge of a person committed for contempt of Parliament see para 229 ante. See further PARLIAMENT vol 34 (Reissue) paras 1009-1010.

2 *Ex p Fernandez* (1861) 10 CBNS 3; *Re Clarke* (1842) 2 QB 619.

3 *Hamond v Howell* (1674) 1 Mod Rep 184. As to contempt of court see generally CONTEMPT OF COURT.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(2) PROCEDURE ON HABEAS CORPUS/(iii) The Return to the Writ/240. Return when production impossible.

240. Return when production impossible.

If it is impossible for the person to whom the writ of habeas corpus is directed to produce the body of the person alleged to be in his custody by reason of his having parted with the custody of that person before the service of the writ, he must nevertheless make a return setting out the facts unequivocally and distinctly and showing the reason why he is unable to obey the writ¹. Such a return will constitute a good and sufficient return; for the object of the writ is not punitive, but remedial².

The fact that a prisoner whose production has been ordered has been discharged from custody before the return should be stated on the return, and in that event the cause of taking and detainer need not appear on the return³.

1 *Barnardo v Ford, Gossage's Case* [1892] AC 326, HL; *R v Winton* (1792) 5 Term Rep 89; *R v Wright* (1731) 2 Stra 915; *R v Secretary of State for Home Affairs, ex p O'Brien* [1923] 2 KB 361 at 399, CA, per Atkin LJ.

2 *Barnardo v Ford, Gossage's Case* [1892] AC 326, HL, overruling *R v Barnardo* (1889) 23 QBD 305, CA; *R v Secretary of State for Home Affairs, ex p O'Brien* [1923] 2 KB 361 at 391, CA, per Scrutton LJ; and see para 216 ante. See also *Re Nicola Raine* (1982) Times, 5 May, DC. In *Re Quigley* [1983] NI 245, NI HC, a return stating that the person named in the writ was under police protection of her own free will and was free to go at any time was a good and valid return.

3 *R v Gavin* (1848) 3 New Pract Cas 198; see also *R v Spencer* (1778) 1 Gude's Crown Practice 278; *R v Bethuen* (1738) Andr 281; *R v Woodward, Re Thompson* (1889) 5 TLR 601.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(2) PROCEDURE ON HABEAS CORPUS/(iii) The Return to the Writ/241. Return during vacation.

241. Return during vacation.

When the return is made during vacation, a judge has power to refer the case to the court to be heard during the ensuing sittings¹.

1 *Re Turner* (1846) 15 LJMC 140.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(2) PROCEDURE ON HABEAS CORPUS/(iii) The Return to the Writ/242. Custody pending hearing.

242. Custody pending hearing.

On the return and the production of the party on whose behalf the writ was issued, the authority under which the original commitment took place is suspended and, until the case is finally disposed of, the custody of the prisoner is under the control and direction of the court to which the return is made¹. The prisoner is detained not under the original commitment, but under the authority of the writ². Pending the hearing the court has power, even after the return is filed, to remand the prisoner to the prison where he is in custody or to any other place of commitment and to bring him up from time to time until he is either bailed, discharged, or remanded³. The court also has power to bail the prisoner from day to day pending the argument as to the sufficiency of the return to the writ⁴. If the prisoner is granted bail, he will normally surrender to his bail at the Royal Courts of Justice before the court dealing with the matter. It would seem, however, that, if the court is satisfied that his detention was unlawful, his release may be ordered even if he has not so surrendered.

1 *R v Bethel* (1695) 5 Mod Rep 19; *Re Kaine* 14 How 103 at 134 (USA 1852); *Harwood's Case* (1672) 1 Vent 178.

2 *R v Bethel* (1695) 5 Mod Rep 19.

3 *Anon* (1678) 1 Vent 330; *Peyton's Case* (1680) 1 Vent 346.

4 *Bronker's Case* (1647) Sty 16; *R v Bethel* (1695) 5 Mod Rep 19 at 23 per Holt CJ.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(2) PROCEDURE ON HABEAS CORPUS/(iii) The Return to the Writ/243. Order on hearing.

243. Order on hearing.

All orders made in proceedings for habeas corpus in the Queen's Bench Division are to be drawn up in the Administrative Court, and a copy of any order made by a judge in chambers in any such proceedings must be filed in that office¹. Records are in the care of the Master of the Administrative Court².

¹ The practice described in the text was formerly governed by CPR Sch 1 RSC Ord 57 rr 1(1), 4(2) (revoked by SI 2000/2092) and it appears that the practice is still being observed. As to the CPR see para 158 ante.

² The practice described in the text was formerly governed by CPR Sch 1 RSC Ord 57 rr 1(1), 6 (revoked by SI 2000/2092) and it appears that the practice is still being observed.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(2) PROCEDURE ON HABEAS CORPUS/(iv) Discharge from Custody/244. Discharge from custody.

(iv) Discharge from Custody

244. Discharge from custody.

Where, after argument, the return is found to be bad or insufficient, the party on whose behalf the writ was issued is entitled to be discharged from custody¹. Where, however, the person restrained in any proceedings from which an appeal lies under the Administration of Justice Act 1960² would, but for the decision of the court, be liable to be detained, and immediately after that decision the respondent to the application is granted, or gives notice that he intends to apply for, permission to appeal, the court may make an order providing for the detention of the person restrained, or directing that he must not be released except on bail, so long as an appeal under the Act is pending³.

The court is not bound to order a prisoner to be discharged merely on the ground of irregularity in the form of the return, provided that a good cause of commitment is disclosed on the return⁴.

When a prisoner who was improperly committed obtains his discharge on habeas corpus, the order of commitment is not quashed, for the prisoner is discharged or remanded on the return alone⁵.

¹ *Hawkeridge's Case* (1616) 12 Co Rep 129; *Re Howard* (1844) 2 Dow & L 536; *Re Authers* (1889) 22 QBD 345, DC.

² ie an appeal from the Divisional Court to the House of Lords in a criminal cause or matter under the Administration of Justice Act 1960 s 1 (as amended): see para 247 post.

3 Ibid ss 5(1), 17(1)(c) (s 5(1) amended by the Criminal Justice Act 1967 s 98(6), Sch 4 para 26). Where the case is a criminal application for habeas corpus, if no such application is made and the individual is discharged by the Divisional Court then the individual is not liable to be detained again, irrespective of the decision of the House of Lords on the appeal: Administration of Justice Act 1960 s 5(1) (as so amended); *United States Government v McCaffery* [1984] 2 All ER 570 at 576, [1984] 1 WLR 867 at 873, HL, per Lord Diplock.

4 *R v Bethel* (1695) 5 Mod Rep 19; *Shieldes' Case* (1639) March 52; *R v Judd* (1788) 2 Term Rep 255.

5 *Bushell's Case* (1670) Vaugh 135; see also *Glanville's Case* (1614) Moore KB 838.

UPDATE

244 Discharge from custody

TEXT AND NOTE 3--Administration of Justice Act 1960 s 5(1) further amended, s 5(1A) added: Criminal Justice and Immigration Act 2008 Sch 8 para 26(2), (3). For transitory modifications see Criminal Justice and Immigration Act 2008 (Transitory Provisions) Order 2008, SI 2008/1587.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(2) PROCEDURE ON HABEAS CORPUS/(iv) Discharge from Custody/245. Re-arrest after discharge.

245. Re-arrest after discharge.

A prisoner who has been discharged from illegal custody on habeas corpus cannot be again imprisoned or committed for or in respect of the same offence¹; but he is not privileged from being immediately re-arrested on criminal process in relation to some matter other than that in respect of which he has been discharged, although he is privileged from re-arrest on civil process whilst returning to his place of abode from the court discharging him².

Under the Habeas Corpus Act 1679 no person is at any time to be again imprisoned or committed for the same offence by any person, otherwise than by the legal order and process of the court in which he is bound to appear, or other court having jurisdiction of the cause; anyone unduly recommitting the discharged person for the same offence, or anyone knowingly aiding or assisting in recommitting him, is liable to a penalty of £500 payable to the aggrieved party³.

Thus a person who has been brought up and discharged from custody on giving bail and entering into his own recognisance cannot again be arrested for the same offence and obliged to apply for a second writ⁴. The Habeas Corpus Act 1679⁵ would seem also to apply to cases where a prisoner has been discharged on habeas corpus unconditionally on the ground that the warrant on which he is detained shows no valid cause for his detention, but it can only apply when the second arrest is substantially for the same cause as the first, so that the return to the second writ raises for the opinion of the court the same question with reference to the validity of the grounds of detention as the first⁶.

There is, therefore, no ground for discharging from custody under a second valid warrant merely because the prisoner has been previously discharged on habeas corpus from an unlawful imprisonment⁷. Where, however, a person has been discharged on habeas corpus, and after discharge is again arrested for the same cause or on the same grounds or pretext, the party causing him to be so arrested is liable to committal⁸.

- 1 *Searché's Case* (1588) 1 Leon 70.
- 2 *Re Douglas* (1842) 3 QB 825. See also *A-G for the Colony of Hong Kong v Kwok-a-Sing* (1873) LR 5 PC 179.
- 3 Habeas Corpus Act 1679 s 5 (amended by the Bail Act 1976 s 12, Sch 3).
- 4 See *A-G for the Colony of Hong Kong v Kwok-a-Sing* (1873) LR 5 PC 179 at 201.
- 5 Ie the Habeas Corpus Act 1679 s 5 (as amended): see the text and note 3 supra.
- 6 See *A-G for the Colony of Hong Kong v Kwok-a-Sing* (1873) LR 5 PC 179 at 202; *R v Governor of Brixton Prison, ex p Stallmann* [1912] 3 KB 424.
- 7 *A-G for the Colony of Hong Kong v Kwok-a-Sing* (1873) LR 5 PC 179; *R v Governor of Brixton Prison, ex p Stallmann* [1912] 3 KB 424; and see *R v Secretary of State for Home Affairs, ex p Budd* [1942] 2 KB 14, [1942] 1 All ER 373, CA.
- 8 *Searché's Case* (1588) 1 Leon 70.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(2) PROCEDURE ON HABEAS CORPUS/(v) Enforcing Obedience to the Writ/246. Committal.

(v) Enforcing Obedience to the Writ

246. Committal.

The appropriate mode of enforcing obedience to a writ of habeas corpus is by committal for contempt¹. When a writ is disregarded and no return is made to it, the party to whom the writ is directed is liable to committal², even if he is a peer³.

Application to a judge in chambers for a warrant for arrest can be made during vacation or when there is no Divisional Court available, and in such event takes the place of an application to the court for a committal order⁴.

A committal order may be made against a person who intentionally makes a false return to a writ of habeas corpus, but an unintentional misrepresentation on a return is not ground for committal⁵.

An insufficient return may constitute a contempt, and the party knowingly making it is liable to committal⁶.

1 As to the punishment for contempt and procedure by way of committal see CONTEMPT OF COURT vol 9(1) (Reissue) para 491 et seq.

2 Formerly, the remedy of attachment was more commonly used. That remedy is now obsolete: see CONTEMPT OF COURT vol 9(1) (Reissue) para 491. For examples of attachment in cases of habeas corpus see *R v Colvin* (1724) 8 Mod Rep 226; *Ex p Bosen and Brandt*, *R v Barber* (1759) 2 Keny 289; *R v Wright* (1731) 2 Stra 915; *R v Winton* (1792) 5 Term Rep 89; *R v Gavin* (1848) 3 New Pract Cas 198; *R v Woodward, Re Thompson* (1889) 5 TLR 601; *R v Durmill, ex p Easingwold Union* (1899) Times, 31 May.

3 *R v Earl Ferrers* (1758) 1 Burr 631, where the question was raised whether an attachment could be issued by the Court of King's Bench against a peer during the sitting of Parliament for disobedience to a writ of habeas corpus, or whether he was protected by privilege of peerage. Lord Mansfield CJ, in the House of Lords, spoke in support of the jurisdiction of his court, and the injustice and inconvenience of allowing such a privilege in criminal cases and breaches of the peace; Lord Hardwicke spoke to the same effect, and proposed that in order to put an end to all doubt about it for the future, the Lords should come to a resolution, and the following resolution was accordingly ordered to be entered on their journal: '7 Februarii, 1757. It is ordered and declared

that no peer or lord of parliament hath privilege against being compelled by process of the Courts of Westminster Hall to pay obedience to a writ of habeas corpus directed to him'; a similar order and declaration was on 8 June 1757 ordered to be entered upon the roll of the Standing Orders of the House of Lords. A writ of attachment to enforce obedience to the writ of habeas corpus was subsequently issued by the Court of King's Bench against Lord Ferrers: see *R v Earl Ferrers* supra at 633. See also 2 Hawk PC c 22, s 33.

4 See the Habeas Corpus Act 1816 s 2. See also *Ex p Wyatt* (1837) 5 Dowl 389; *R v Rowe* (1894) 71 LT 578; *R v Wigand* [1913] 2 KB 419 (where personal service was dispensed with because the party to whom the writ was directed had left the country with full knowledge to evade service).

5 See *Watson's Case* (1839) 9 Ad & El 731.

6 See *R v Winton* (1792) 5 Term Rep 89; *Watson's Case* (1839) 9 Ad & El 731; *Re Matthews* (1860) 12 ICLR 233.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(2) PROCEDURE ON HABEAS CORPUS/(vi) Appeals/247. Appeals in habeas corpus proceedings.

(vi) Appeals

247. Appeals in habeas corpus proceedings.

In any proceedings upon application for habeas corpus, whether civil or criminal, an appeal lies against an order for the release of the person restrained as well as against the refusal of such an order¹.

The distinction between civil and criminal habeas corpus proceedings is particularly important on the question of appeals. In a civil cause or matter, an appeal lies² without permission to the Court of Appeal from any decision of the High Court. On the other hand, in a criminal cause or matter³, an appeal lies from a decision of the High Court to the House of Lords, subject to leave to appeal being obtained from the Divisional Court⁴ or from the House of Lords⁵.

An appeal brought against the decision of the Divisional Court to the House of Lords in a criminal application for habeas corpus will not affect the right of the person restrained to be discharged in pursuance of the order under appeal and to remain at large regardless of the decision on the appeal⁶ unless the court making the order for the discharge immediately grants the opposite party, or that party gives notice that he intends to apply for, leave to appeal, in which case the court may make an order providing for the detention of the appellant or directing that he is not to be released so long as the appeal to the House of Lords is pending⁷, although the court may grant him bail meanwhile⁸.

1 Administration of Justice Act 1960 s 15(1). In *R v Secretary of State for the Home Department, ex p Muboyayi* [1992] QB 244, [1991] 4 All ER 72, CA, the court confirmed that a respondent can appeal against the issue of a writ.

There was formerly no appeal where the habeas corpus applied for was in a criminal cause or matter (see *Ex p Le Gros* (1914) 30 TLR 249, CA), or where the court ordered that a writ of habeas corpus should issue on the ground that the detention was illegal (see *Cox v Hakes* (1890) 15 App Cas 506, HL; *Secretary of State for Home Affairs v O'Brien* [1923] AC 603, HL). The position was different in cases relating to the custody of infants, where an appeal did lie from an order directing the issue of the writ (see *Barnardo v McHugh* [1891] AC 388, HL; *Barnardo v Ford, Gossage's Case* [1892] AC 326, HL) or from an order refusing the issue of the writ (see *Re Carroll* [1931] 1 KB 104, CA, where security for the costs of the appeal was ordered).

2 Ie by virtue of the Administration of Justice Act 1960 s 15(1).

3 See *Carr v Atkins* [1987] QB 963, [1987] 3 All ER 684, CA; *Day v Grant*, and *R v Manchester Crown Court, ex p Williams* [1987] QB 972, [1987] 3 All ER 678, CA. For this purpose a criminal cause or matter is one where there is or may be a penal element involved, eg where the result of the proceedings may be the trial of the applicant and his possible punishment for an alleged offence, whether by an English court or by a foreign court claiming jurisdiction (see *Amand v Home Secretary and Minister of Defence of the Royal Netherlands Government* [1943] AC 147 at 156, [1942] 2 All ER 381 at 385, HL, per Viscount Simon LC; see also *Ex p Woodhall* (1888) 20 QBD 832, CA; *R v Governor of Brixton Prison, ex p Savarkar* [1910] 2 KB 1056, CA) or where the question is whether the sentence for a criminal offence is being duly carried out (see *R v Governor of Maidstone Prison, ex p Maguire* [1925] 2 KB 265, DC (on appeal 95 LJB 55, CA); *Re Hastings (No 3)* [1959] 3 All ER 221, [1959] 1 WLR 807, CA). The words 'criminal cause or matter' are to be construed widely: *Ex p Woodhall* supra at 835-836. They include a case where the person restrained is restrained as a person liable, or treated by virtue of any enactment as liable, to be detained under the Mental Health Act 1983 Pt III (ss 35-55) (as amended) otherwise than by virtue of s 48(2)(c), (d)) (see MENTAL HEALTH vol 30(2) (Reissue) para 536); Administration of Justice Act 1960 s 14(3); Interpretation Act 1978 s 17(2).

In the following cases the cause or matter was held to be criminal: *R v Steel* (1876) 2 QBD 37, CA (criminal information for libel; order for taxation of costs of criminal procedure); *R v Fletcher* (1876) 2 QBD 43, CA (certiorari (now known as a quashing order) to quash conviction); *Mellor v Denham* (1880) 5 QBD 467, CA (contravention of byelaws of school board); *R v Whitchurch* (1881) 7 QBD 534, CA (order to abate nuisance made in circumstances when a penalty might have been ordered as an alternative); *R v Foote* (1883) 10 QBD 378, CA (application for bail refused); *R v Rudge* (1886) 16 QBD 459, CA (refusal of certiorari to alter venue of trial); *R v Central Criminal Court Justices* (1886) 18 QBD 314, CA (refusal of certiorari to quash restitution order); *Ex p Woodhall* (1888) 20 QBD 832, CA (refusal of habeas corpus in respect of fugitive criminal, accused of extraditable crime); *Ex p Schofield* [1891] 2 QB 428, CA (refusal of mandamus (now known as a mandatory order) to magistrate requiring him to state a case when he has ordered the abatement of a nuisance); *R v Tyler and International Commercial Co* [1891] 2 QB 588, CA (mandamus to magistrate requiring him to hear and determine application for summons); *Payne v Wright* (1892) 61 LJM 114, CA (decision of Divisional Court on case stated concerning compliance with building legislation); *Seaman v Burley* [1896] 2 QB 344, CA (application to enforce poor rate by warrant of distress); *R v D'Eyncourt* (1901) 18 TLR 53, CA (refusal of mandamus to state a case following conviction under building legislation); *Robson v Biggar* [1908] 1 KB 672, CA (unlawful retention of excess charges by bailiff in levying distress for rent); *R v Governor of Brixton Prison, ex p Savarka* [1910] 2 KB 1056, CA (refusal of habeas corpus in respect of prisoner committed under fugitive offenders legislation); *R v Wiltshire Justices, ex p Jay* [1912] 1 KB 566, CA (order for costs made by quarter sessions when appeal to that court not prosecuted); *R v Garrett, ex p Sharf* [1917] 2 KB 99, CA (refusal of prohibition to prohibit magistrate hearing charges alleging knowingly making false statements to obtain passports contrary to regulations under Defence of the Realm Acts); *R v Marlborough Street Police Magistrate, ex p Samuel* (1919) 63 Sol Jo 300, CA (refusal of certiorari to quash conviction for breach of regulations relating to royal parks); *Provincial Cinematograph Theatres Ltd v Newcastle-upon-Tyne Profiteering Committee* (1921) 90 LJB 1064, HL (direction by profiteering committee that prosecution be brought in respect of excessive charge); *R v London Quarter Sessions Justices* [1946] KB 176, [1946] 1 All ER 129, CA (prohibition (now known as a prohibiting order) refused on application to prohibit appeal to quarter sessions from dismissal of informations alleging sale of intoxicating liquor by retail without licence; the charges might have resulted in an order to pay excise penalties); *Ex p Chapple* (1950) 66 (pt 2) TLR 932, CA (conviction by court-martial of NAAFI employee for offence under the Army Act 1881); *Re Hastings (No 3)* [1959] 3 All ER 221, [1959] 1 WLR 807, CA (conviction on several counts and sentence not specifically related to counts; conviction on one count quashed but sentence unaltered; habeas corpus refused); *R v Secretary of State for the Home Department, ex p Dannenberg* [1984] QB 766, [1984] 2 All ER 481, CA (recommendation for deportation, although the deportation order itself could be quashed on appeal); *Cuoghi v Governor of Brixton Prison* [1997] 1 WLR 1346, CA (application under the Extradition Act 1989 s 11(3), in connection with a letter of request under the Criminal Justice (International Co-operation) Act 1990 s 3 (see EXTRADITION vol 17(2) (Reissue) para 1222).

In the following cases the cause or matter was held not to be criminal: *Scott v Scott* [1913] AC 417, HL (order to pay costs of motion committing for contempt of court a petitioner for nullity); *R v Manchester Local Profiteering Committee, ex p Lancashire and Yorkshire Rly Co* (1920) 89 LJB 1089, CA (discharge of prohibition prohibiting profiteering committee from investigating complaint concerning charges); *R v Southampton Justices, ex p Green* [1976] QB 11, [1975] 2 All ER 1073, CA (application to estreat recognisance) (cf *Carr v Atkins* [1987] QB 963, [1987] 3 All ER 684, CA); *R v Lambeth Metropolitan Magistrate, ex p McComb* [1983] QB 551, [1983] 1 All ER 321, CA (*R v Southampton Justices, ex p Green* supra doubted but followed).

4 The application to the High Court for permission to appeal must be made within 14 days after its decision (Administration of Justice Act 1960 s 2(1)), although the period may be extended on the defendant's application (s 2(3)).

5 Ibid s 15(3) (amended by the Access to Justice Act 1999 s 65(2)(a)), applying the Administration of Justice Act 1960 s 1(1)(a) (amended by the Access to Justice Act 1999 s 63(1)). The application to the House of Lords for permission to appeal (which is made by petition) must be made within 14 days of its refusal by the High Court (Administration of Justice Act 1960 s 2(1)), although the period may be extended on the defendant's application (s 2(3)).

The conditions contained in s 1(2), that permission to appeal will not be granted unless it is certified by the court below that a point of law of general importance is involved in the decision and it appears to that court or to the House of Lords that the point is one which ought to be considered by that House, do not apply to an appeal in habeas corpus proceedings: s 15(3) (as so amended).

6 Ibid s 15(4) (amended by the Access to Justice Act 1999 s 65(2)(b)).

7 Administration of Justice Act 1960 s 5(1) (amended by the Criminal Justice Act 1967 s 98(6), Sch 4 para 26), Administration of Justice Act 1960 s 15(4) (as amended: see note 6 supra); *United States Government v McCaffery* [1984] 2 All ER 570, [1984] 1 WLR 867, HL.

8 Administration of Justice Act 1960 s 4(2) (amended by the Criminal Justice Act 1967 s 98(6), Sch 4 para 24; the Bail Act 1976 s 12(1), (2), Sch 2 para 31; the Criminal Justice and Public Order Act 1994 s 168(2), Sch 10 para 10; and the Access to Justice Act 1999 s 63(2)), Administration of Justice Act 1960 s 5(1) (amended by the Criminal Justice Act 1967 Sch 4 para 26). As to bail pending appeal see CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11(3) (2006 Reissue) para 1166 et seq.

UPDATE

247 Appeals in habeas corpus proceedings

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

NOTE 3--Criminal Justice (International Co-operation) Act 1990 s 3 repealed: Crime (International Co-operation) Act 2003 Sch 5, paras 41, 42, Sch 6.

NOTES 4-8--Administration of Justice Act 1960 ss 1, 2, 4 further amended: Constitutional Reform Act 2005 Sch 9 para 13(2)-(4) (in force 1 October 2009: SI 2009/1604).

NOTE 4--1960 Act s 2(3) amended: Courts Act 2003 Sch 8 para 111, Sch 10.

TEXT AND NOTES 7, 8--Administration of Justice Act 1960 s 5(1) further amended, s 5(1A) added: Criminal Justice and Immigration Act 2008 Sch 8 para 26(2), (3). For transitory modifications see Criminal Justice and Immigration Act 2008 (Transitory Provisions) Order 2008, SI 2008/1587.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(2) PROCEDURE ON HABEAS CORPUS/(vii) Costs/248. Costs.

(vii) Costs

248. Costs.

Costs are in the discretion of the court to be exercised judicially¹ and can be ordered to be paid by either party². The discretion lies in both criminal and non-criminal applications³. It is not in every case, however, that costs will be awarded to the successful party⁴.

1 Supreme Court Act 1981 s 51(1) (substituted by the Courts and Legal Services Act 1990 s 4); CPR 44.3. As to the CPR see para 158 ante. See also *Aiden Shipping Co Ltd v Interbulk Ltd, The Vimeira* [1986] AC 965, [1986] 2 All ER 409, HL.

2 *R v Jones* [1894] 2 QB 382, sub nom *R v Mansel-Jones* 70 LT 845, DC. As to the weight to be given to cases concerning matters of civil procedure decided before 26 April 1999 (ie the date on which the CPR came into force) see para 158 ante.

3 *R v Chief Metropolitan Stipendiary Magistrate, ex p Osman* [1988] 3 All ER 173, 90 Cr App Rep 313, DC.

4 Indeed, it is perhaps exceptional to award costs on a habeas corpus application: *R v Chief Metropolitan Stipendiary Magistrate, ex p Osman* [1988] 3 All ER 173 at 175, DC, per Lloyd LJ. Cf *R v Jones* [1894] 2 QB 382, sub nom *R v Mansel-Jones* 70 LT 845, DC.

UPDATE

248 Costs

NOTE 1--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(2) PROCEDURE ON HABEAS CORPUS/(vii) Costs/249. Costs of appeal.

249. Costs of appeal.

On an appeal to the Court of Appeal in an application for a writ of habeas corpus, the Court of Appeal has power to make an order requiring the appellant to give security for the costs of the appeal¹. On the hearing of an appeal from a judgment granting a writ of habeas corpus, the Court of Appeal has jurisdiction to give the costs of the appeal to the party who has succeeded on the appeal². The Court of Appeal in such a case has discretionary power to award to the successful party the costs in the court below³.

1 *Re Carroll* [1931] 1 KB 104, CA.

2 *Ex p Cox (Bell)* (1887) 20 QBD 1 at 37n, CA; revsd, but without affecting the matter of costs, (1890) 15 App Cas 506, HL.

3 *Ex p Cox (Bell)* (1887) as reported in 57 LJQB 98 at 113; revsd, but without affecting the matter of costs (1890) 15 App Cas 506, HL.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/6. HABEAS CORPUS/(3) OTHER WRITS OF HABEAS CORPUS/250. Writ of habeas corpus ad testificandum or ad respondendum.

(3) OTHER WRITS OF HABEAS CORPUS

250. Writ of habeas corpus ad testificandum or ad respondendum.

There are alternative methods of bringing up a prisoner to give evidence before any court, tribunal or justice¹.

The first method is by the issue of the common law writ of habeas corpus ad testificandum², which in the case of a prisoner in custody under civil process is granted by a judge on an application made without notice on witness statement or affidavit³. The reasonable expenses of the prisoner and his escort must first be tendered⁴.

The second method is by warrant or order of a judge to compel the attendance of a prisoner under sentence or commitment⁵. It is issued in the case of a prisoner detained under criminal process on the order of the judge made on a without notice application⁶, supported by a witness statement or affidavit stating whether the prisoner is confined under sentence or under commitment for trial or otherwise, giving the name of the prison in which he is confined, and stating that his evidence is necessary and when and where required⁷.

The third method is by an application for an order to bring up a prisoner, otherwise than by writ of habeas corpus, to give evidence in any cause or matter, civil or criminal, before any court, tribunal or justice⁸. The application must be made on witness statement or affidavit to a judge⁹.

The fourth method is by a direction of the Secretary of State¹⁰ that the person detained in custody be taken to the place at which he is required to attend. Such a direction will be made if the Secretary of State is satisfied that the attendance at any place in the United Kingdom¹¹ or the Channel Islands of a person detained in any part of the United Kingdom in a prison is desirable in the interests of justice or for the purposes of any public inquiry¹². The application for the production of a prisoner to give evidence in a civil court is normally made by the solicitor acting for the party at whose instance the prisoner is required.

The writ of habeas corpus ad respondendum¹³ is granted at common law. It issues to bring up a prisoner for trial or to be examined¹⁴. Unlike the writ of habeas corpus ad subjiciendum, the writ of habeas corpus ad respondendum may be issued where the applicant has not been illegally detained or detained pursuant to an invalid order¹⁵. Application for the writ is made on witness statement or affidavit to a judge¹⁶.

The writ of habeas corpus ad deliberandum et recipiendum is obsolete. The object of the writ of habeas corpus ad deliberandum was to enable the removal of prisoners from one place of custody to another for the purpose of their trial¹⁷. However, modern legislation facilitates the removal of prisoners from one place of custody to another for various purposes¹⁸.

1 Clearly a witness order is inappropriate, because a prisoner is in no position to obey it.

2 For the form of writ see CPR Sch 1 RSC Ord 54 r 10; Form 91. As to the CPR see para 158 ante.

3 CPR Sch 1 RSC Ord 54 r 9(1). The writ is a common law writ (see 3 Bl Com (14th Edn) 30), but for the purposes of High Court trials it is issued under the Habeas Corpus Act 1804 s 1 (amended by the Courts Act 1971 s 56(4), Sch 11 Pt IV). It is issued at the Action Department of the Central Office at the Royal Courts of Justice. A writ of habeas corpus will not be granted to a party to a suit who is in custody to enable him to appear in court for the purpose of arguing his case in person: see *Weldon v Neal* (1885) 15 QBD 471, DC; and para 227 ante. As to the weight to be given to cases concerning matters of civil procedure decided before 26 April 1999 (ie the date on which the CPR came into force) see para 158 ante.

4 See *Becker v Home Office* [1972] 2 QB 407, [1972] 2 All ER 676, CA.

5 See the Criminal Procedure Act 1853 s 9 (amended by the Statute Law Revision Act 1892; and the Prison Act 1898 s 15, Schedule); and CIVIL PROCEDURE vol 11 (2009) PARA 1009.

6 CPR Sch 1 RSC Ord 54 r 9(2).

7 See Short and Mellor's Crown Office Practice (2nd Edn) 335. The order is drawn up at the Administrative Court (formerly known as the Crown Office: see para 69 ante).

8 Criminal Procedure Act 1853 s 9 (as amended: see note 5 supra); Supreme Court of Judicature (Consolidation) Act 1925 s 18(2) (repealed but jurisdiction preserved by the Supreme Court Act 1981 s 19(2)); County Courts Act 1984 s 57. In *Jenks v Ditton* (1897) 76 LT 591, Stirling J declined to order the issue of a writ of habeas corpus to bring up a prisoner in custody under civil process, but he made an order for the prison governor to bring up the prisoner.

9 CPR Sch 1 RSC Ord 54 r 9(2).

10 As to the Secretary of State see para 13 note 11 ante.

11 For the meaning of 'United Kingdom' see para 14 note 19 ante.

12 Crime (Sentences) Act 1997 s 41, Sch 1 para 3. See further *R v Governor of Brixton Prison, ex p Walsh* [1985] AC 154, [1984] 2 All ER 609, HL; and PRISONS vol 36(2) (Reissue) para 550. In civil actions the Secretary of State must be satisfied that the Home Office will be reimbursed the cost of the production of the person restrained.

13 For a form of writ see CPR Sch 1 RSC Ord 54 r 10; Form 92. See the Habeas Corpus Act 1803 where the practice is recited; and *Ex p Griffiths* (1822) 5 B & Ald 730; *R v Day* (1862) 3 F & F 526. Formerly the writ was used where one person had a cause of action against another who was in custody under process of an inferior court to enable the prisoner to be removed so as to charge him with a new cause of action in a superior court: 3 Bl Com (14th Edn) 129; Bac Abr Habeas Corpus (A). Persons who are in custody and are awaiting trial for any criminal offence may be brought up on an indictment by order without writ of habeas corpus ad respondendum: Criminal Law Amendment Act 1867 s 10 (amended by the Bail Act 1976 s 12, Sch 2 para 3).

14 See Short and Mellor's Crown Office Practice (2nd Edn) 334. Formerly, in regard to courts-martial and proceedings before commissioners in bankruptcy, the writ issued under the Habeas Corpus Act 1803 s 1.

15 See *R v Governor of Brixton Prison, ex p Walsh* [1984] QB 392 at 402, [1984] 1 All ER 344 at 349-350, DC, per curiam (where the court rejected the applicant's contention that there was a pre-existing duty to bring a prisoner up to give evidence derived from the power to issue a writ of habeas corpus for that purpose). The point was not considered on appeal to the House of Lords (see [1985] AC 154 at 162-163, [1984] 2 All ER 609 at 611, HL, per Lord Fraser of Tullybelton).

16 CPR Sch 1 RSC Ord 54 r 9(1).

17 See 3 Bl Com (14th Edn) 130, Bac Abr Habeas Corpus (A). The Habeas Corpus Act 1679 prohibits the removal from prison or custody of any subject of this realm who is committed to any prison or in custody of any officer for any criminal matter except by habeas corpus or other legal writ or in certain specified cases: s 8 (amended by the Statute Law Revision Act 1888; and the Courts Act 1971 s 56(1), Sch 8 Pt II para 4(2)).

18 See eg the Prison Act 1952 ss 12, 13 (as amended); and PRISONS vol 36(2) (Reissue) para 538.

UPDATE

250 Writ of habeas corpus ad testificandum or ad respondendum

NOTE 8--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/7. MISCELLANEOUS AND OBSOLETE PROCEEDINGS/(1) QUO WARRANTO AND PROCEEDINGS IN LIEU OF INFORMATION IN THE NATURE OF QUO WARRANTO/251. In general.

7. MISCELLANEOUS AND OBSOLETE PROCEEDINGS

(1) QUO WARRANTO AND PROCEEDINGS IN LIEU OF INFORMATION IN THE NATURE OF QUO WARRANTO

251. In general.

An information in the nature of a quo warranto took the place of the obsolete writ of quo warranto which lay against a person who claimed or usurped an office, franchise, or liberty, to inquire by what authority he supported his claim, in order that the right to the office or franchise might be determined. It also lay in cases of non-user, abuse, or long neglect of a franchise¹. Certain limitations were imposed on the scope of the information by statutory

provisions to the effect that elections to certain offices should not be questioned on the ground that the person elected was at the time of election disqualified, save by election petition². In 1933 an alternative form of proceedings was substituted for informations in respect of the qualification of persons acting as members of a local authority or as mayors of boroughs, and it was provided that except in the form so substituted no proceedings, whether by way of information in the nature of quo warranto or otherwise, should be taken against a person on the ground that he had, while disqualified for acting as a member of a local authority or mayor of a borough, so acted or claimed to be entitled so to act³. In 1938 all informations in the nature of quo warranto were abolished, and it was provided that, in any case where a person acts in an office in which he is not entitled to act and an information in the nature of quo warranto would have lain against him, the High Court was empowered, at the instance of any person who would have been entitled to apply for such an information, to grant an injunction restraining the former from so acting and might, if the case so required, declare the office to be vacant⁴. This procedure has been replaced, in turn, by a provision enabling the court to grant an injunction to restrain a person from acting in an office where he is not entitled so to do, and if the case so requires, to declare the office to be vacant⁵.

1 3 Bl Com 262; 2 Co Inst 282. Quo warranto proceedings were used generally for the purpose of trying the right to corporate offices. For an instance of quo warranto proceedings on account of the abuse of a franchise see *R v Hertford Corpn* (1699) 1 Salk 374 (where the defendant was required to show by what authority he had admitted persons to be freemen of the corporation who were not inhabitants of the borough); and see *Peter v Kendal* (1827) 6 B & C 703 at 710, DC, per Bayley J. In *R v Bridge* (1748) 1 Wm Bl 46, there were quo warranto proceedings in respect of holding a court leet after long disuse. For a historical statement of the development of quo warranto proceedings see *R v Speyer*, *R v Cassel* [1916] 1 KB 595 at 608 per Lord Reading CJ.

2 See now the Representation of the People Act 1983 s 127; and ELECTIONS AND REFERENDUMS vol 15(4) (2007 Reissue) para 760.

3 Local Government Act 1933 s 84(6) (repealed): see now the Local Government Act 1972 s 92(5); and para 154 ante.

4 Administration of Justice (Miscellaneous Provisions) Act 1938 s 9 (repealed): see now the Supreme Court Act 1981 s 30; and para 153 ante. See also CORPORATIONS vol 9(2) (2006 Reissue) para 1173.

5 See the Supreme Court Act 1981 s 30; and para 153 ante. It is not clear how far cases relating to the old procedures will be considered relevant to an application under s 30. For examples of cases dealing with the sufficiency or insufficiency of affidavits used in quo warranto applications under the old procedure see *R v Edye* (1848) 12 QB 936; *R v Slatter* (1840) 11 Ad & El 505; *R v Harwood* (1802) 2 East 177; *R v Slythe* (1827) 6 B & C 240; *R v Quayle* (1840) 11 Ad & El 508; *R v Day* (1829) 9 B & C 702; *R v Rolfe* (1833) 1 Nev & MKB 773; *R v Hughes* (1828) 7 B & C 708; *R v Barzey* (1815) 4 M & S 253. Under the old law the onus was on the applicant to show a disqualification in the respondent: *R v Jefferson* (1833) 5 B & Ad 855 (where, it being alleged that a large proportion of votes cast were bad, it was not shown for whom the bad votes were given).

UPDATE

251 In general

NOTES 4, 5--Supreme Court Act 1981 now cited as Senior Courts Act 1981:
Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/7.
MISCELLANEOUS AND OBSOLETE PROCEEDINGS/(1) QUO WARRANTO AND PROCEEDINGS IN LIEU OF INFORMATION IN THE NATURE OF QUO WARRANTO/252. Office must satisfy conditions.

252. Office must satisfy conditions.

An information in the nature of a quo warranto lay¹, and an injunction in lieu of an information would have been granted, in respect of any particular office only if that office satisfied certain conditions.

The office must have been held under the Crown or have been created by the Crown, either by charter alone or by statute². Thus, an information did not lie in respect of the office of churchwarden, for in such a case there can be no usurpation of any right of the Crown³, or against an officer of a private corporation which exercises no franchise or authority under the Crown⁴, or against a clerk to a body of land tax commissioners, because his post was not a corporate office⁵.

1 See para 251 ante.

2 *Darley v R* (1846) 12 Cl & Fin 520, HL; *R v Hampton* (1865) 6 B & S 923 at 931, DC, per Cockburn CJ. If the office is created by statute, the sanction of Parliament may be either mediate, as where commissioners or some other body are empowered by statute to create the office, or immediate: *R v St Martin's Guardians* (1851) 17 QB 149. See now the Supreme Court Act 1981 s 32(2); and para 151 ante.

3 *R v Shepherd* (1791) 4 Term Rep 381. Such an office is not affected by the decisions in *Darley v R* (1846) 12 Cl & Fin 520, HL; *Re Barlow (Rector of Ewhurst)* (1861) 30 LQB 271.

4 *R v Bedford Level Corpn* (1805) 6 East 356, where the office in question was that of registrar to such a corporation.

5 *R v Thatcher* (1822) 1 Dow & Ry KB 426.

UPDATE

252 Office must satisfy conditions

NOTE 2--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/7. MISCELLANEOUS AND OBSOLETE PROCEEDINGS/(1) QUO WARRANTO AND PROCEEDINGS IN LIEU OF INFORMATION IN THE NATURE OF QUO WARRANTO/253. Public nature of office.

253. Public nature of office.

An information in the nature of a quo warranto¹ lay, and an injunction in lieu of an information would have been granted only if the duties of the office were of a public nature². Thus, an information lay against a privy counsellor, because membership of the Privy Council constitutes the holding of an office of a public nature³.

An information in the nature of a quo warranto was held to lie in respect of an elected vestryman⁴; a county treasurer in Ireland⁵ and, apparently, a superintendent registrar of births, deaths and marriages⁶. The following, inter alia, are offices in respect of which there have been quo warranto proceedings, although the question whether or not an information in the nature of a quo warranto would lie was not discussed in some of them⁷: recorder of a borough⁸; freeman of a borough⁹; burgess¹⁰; bailiff of a borough¹¹; constable¹²; mayor¹³; alderman¹⁴; town councillor¹⁵; coroner of a borough¹⁶; coroner of a county¹⁷; justice of the peace¹⁸; sheriff¹⁹; chief

constable²⁰; clerk of the peace²¹; judge of a county court²²; high bailiff of a county court²³; master of a city company²⁴; and member of the General Medical Council²⁵. However, an information did not lie in respect of the post of treasurer to a district council which acted as rural sanitary authority pursuant to the Local Government Act 1894 as the duties of such an office were not of that public and substantive nature required to support a quo warranto²⁶. Similarly, an information was refused in respect of the office of master of a hospital and free school, which institution was a private charitable foundation, the right of appointment to offices in which was in governors who were private and not public functionaries; it was immaterial that a charter of incorporation for the institution had been obtained from the Crown²⁷.

For the same reason a quo warranto information was not an appropriate procedure in respect of such an office as that of committeeman of the Licensed Victuallers' Association²⁸.

1 See para 251 ante.

2 *R v St Martin's Guardians* (1851) 17 QB 149 at 160 per Lord Campbell CJ ('Is the office of a public nature? We must look to the functions, and compare them with those which were held to constitute such an office in *Darley v R* (1846) 12 Cl & Fin 520, HL. The House of Lords laid down no criterion in that case; but they held that the office there in question was public within the rule they laid down').

3 *R v Speyer, R v Cassel* [1916] 1 KB 595; affd on other grounds [1916] 2 KB 858, CA.

4 *R v Soutter* [1891] 1 QB 57, CA (vestrymen elected under the Metropolis Management Act 1855; ground of the decision was that it was an office created by statute).

5 *Darley v R* (1846) 12 Cl & Fin 520, HL (where the ground of the decision was that the public had an interest in the distribution of a fund, and that the officer distributing it was therefore performing duties of a public nature); cf *R v Herefordshire Justices* (1819) 1 Chit 700.

6 In *Ex p Parry* (1887) 3 TLR 649, DC, it was held that an information would not lie in such a case, but in *R v Burrows* [1892] 1 QB 399 at 402, AL Smith J referred to that as 'an unfortunate decision', and held the case to be of no authority. In *R v Carroll* (1888) 22 LR Ir 400, however, *Ex p Parry* supra was followed. In *R v Aclison* (1862) 2 B & S 795, an information was granted in respect of this office, but the point whether or not such an information would lie was not discussed.

7 See further Com Dig Quo Warranto, (A), (B), for a list of cases in which quo warranto has been held to lie or not to lie.

8 *R v Colchester Corp* (1788) 2 Term Rep 259.

9 *R v Pepper* (1838) 7 Ad & El 745.

10 *R v Tate* (1803) 4 East 337; *R v Trelawney* (1765) 3 Burr 1615; *Seale v R* (1857) 8 E & B 22, Ex Ch.

11 *R v Sargent* (1793) 5 Term Rep 466.

12 *R v Wallis* (1793) 5 Term Rep 375.

13 *R v Dixon* (1850) 15 QB 33.

14 *R v Bradley* (1861) 3 E & E 634. See also *R v Morton* [1892] 1 QB 39, DC; *R v Patteson* (1832) 4 B & Ad 9.

15 *R v Ireland* (1868) LR 3 QB 130; *R v Beer* [1903] 2 KB 693.

16 *R v Taylor* (1840) 11 Ad & El 949; *R v Grimshaw* (1847) 10 QB 747.

17 *R v Diplock* (1868) 10 B & S 174.

18 *R v Patteson* (1832) 4 B & Ad 9.

19 *R v Whitwell* (1792) 5 Term Rep 85.

20 *R v Watkinson* (1839) 10 Ad & El 288.

21 *R v Russell* (1869) 10 B & S 91.

22 *R v Parham* (1849) 13 QB 858.

23 *R v Dyer* (1849) 13 QB 851.

24 *R v Attwood* (1833) 4 B & Ad 481.

25 *R v Storrar* (1859) 2 E & E 133.

26 *R v Wells* (1895) 43 WR 576.

27 *R v Mousley* (1846) 8 QB 946; followed in *R v Auchinleck* (1891) 28 LR Ir 404 (where the office in question was that of surgeon or physician to a hospital founded by private persons and afterwards incorporated by Act of Parliament). Cf *R v Gregory* (1772) 4 Term Rep 240n (where it was held that a quo warranto information would not lie for the purpose of trying the validity of an election to a fellowship of a college).

28 *Ex p Smith* (1863) 2 New Rep 321.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/7. MISCELLANEOUS AND OBSOLETE PROCEEDINGS/(1) QUO WARRANTO AND PROCEEDINGS IN LIEU OF INFORMATION IN THE NATURE OF QUO WARRANTO/254. Substantive nature of office.

254. Substantive nature of office.

An information in the nature of quo warranto¹ lay only if the office was substantive in character, that is, an office independent in title, and if the holder of the office was an independent official, not one discharging the functions of a deputy or servant at the will and pleasure of others². An information in the nature of a quo warranto lay in respect of an office held at pleasure, provided that the office was one of a public and substantive character³.

1 See para 251 ante.

2 *Darley v R* (1846) 12 Cl & Fin 520, HL; *R v Speyer*, *R v Cassel* [1916] 1 KB 595; affd on other grounds [1916] 2 KB 858, CA.

3 *R v Speyer*, *R v Cassel* [1916] 1 KB 595; affd on other grounds [1916] 2 KB 858, CA.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/7. MISCELLANEOUS AND OBSOLETE PROCEEDINGS/(1) QUO WARRANTO AND PROCEEDINGS IN LIEU OF INFORMATION IN THE NATURE OF QUO WARRANTO/255. Possession of office essential.

255. Possession of office essential.

An injunction to restrain a person from acting in an office in which he was not so entitled¹ could have been granted only if the person had acted in the office². An information in the nature of quo warranto³ did not lie unless the court was satisfied that the person proceeded against had been in actual possession and user of the particular office in question⁴. A mere claim to be admitted to the office was not sufficient; there had to be a possession or user as well as a claim⁵. Whether particular acts constituted a user of an office was a question of fact, but there was a sufficient user of the office to enable an information to issue if the steps necessary to constitute admission to the office had been taken⁶.

1 See para 251 ante.

2 Administration of Justice (Miscellaneous Provisions) Act 1938 s 9 (repealed): see now the Supreme Court Act 1981 s 30; and para 153 ante.

3 See para 251 ante.

4 *R v Whitwell* (1792) 5 Term Rep 85; *R v Slatter* (1840) 11 Ad & El 505; *Re Armstrong* (1856) 25 LJQB 238; *R v Jones* (1873) 28 LT 270; *R v Tidy* [1892] 2 QB 179, DC.

5 *R v Ponsonby* (1755) 1 Ves 1 (on appeal (1758) 2 Bro Parl Cas 311, HL); *R v Pepper* (1838) 7 Ad & El 745.

6 *R v Tate* (1803) 4 East 337.

UPDATE

255 Possession of office essential

NOTE 2--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/7. MISCELLANEOUS AND OBSOLETE PROCEEDINGS/(1) QUO WARRANTO AND PROCEEDINGS IN LIEU OF INFORMATION IN THE NATURE OF QUO WARRANTO/256. Procedure when office full.

256. Procedure when office full.

The procedures of an information in the nature of quo warranto and of an injunction in lieu of an information were the proper method of questioning the holder's title when an office was in fact filled¹. In such cases mandamus would not be granted².

1 *R v Colchester Corpn* (1788) 2 Term Rep 259 (where the application was for a mandamus to admit a certain person to the office of recorder instead of the person who had been admitted, the object being to try the validity of the election); *R v Councillors of Derby* (1837) 7 Ad & El 419 (where an unsuccessful candidate for the position of councillor of a borough attempted to displace a successful rival who had been declared elected, and had been admitted to the office, by applying for a mandamus to administer to the unsuccessful candidate the declarations necessary to qualify him for the office). See also *Frost v Chester Corpn* (1855) 5 E & B 531; *R v St Martin's Guardians* (1851) 17 QB 149 (where the application was for a mandamus to elect the clerk to the board of guardians, the office being full); *R v Beedle* (1834) 3 Ad & El 467 (where, in order to impugn an election to a body of streets commissioners, a mandamus was asked for and refused commanding the entry of another candidate's name as the person elected, instead of the person who had been declared elected); *R v Winchester Corpn* (1837) 7 Ad & El 215; *R v Ricketts* (1838) 3 Nev & PKB 151; *R v Phippen* (1838) 7 Ad & El 966; *R v Oxford Corpn* (1837) 6 Ad & El 349; *R v Leeds Corpn* (1841) 11 Ad & El 512.

An order of mandamus has been renamed as a mandatory order: see para 117 note 3 ante. As to mandatory orders see para 133 et seq ante.

2 Mandamus went only when the office was vacant. Where there had been an election which was void or merely colourable, however, the court considered that there had been in fact no election and in that case a mandamus was the appropriate remedy.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/7. MISCELLANEOUS AND OBSOLETE PROCEEDINGS/(1) QUO WARRANTO AND PROCEEDINGS IN LIEU OF INFORMATION IN THE NATURE OF QUO WARRANTO/257. Disqualification for office after election.

257. Disqualification for office after election.

Even in a case where an election petition was the only remedy when an election was objected to on the ground that the person whose election was questioned was disqualified at the time of the election¹, the remedy by injunction in lieu of quo warranto was available where a person became disqualified after election, or where the disqualification for election operated also to disqualify for the continued holding of the office².

1 See para 251 ante.

2 *R v Beer* [1903] 2 KB 693.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/7. MISCELLANEOUS AND OBSOLETE PROCEEDINGS/(1) QUO WARRANTO AND PROCEEDINGS IN LIEU OF INFORMATION IN THE NATURE OF QUO WARRANTO/258. Legality of charters.

258. Legality of charters.

An information in the nature of a quo warranto¹ would not have been permitted for the purpose of attacking the legality of a charter of incorporation granted to a town through an officer appointed under it. Accordingly, an information calling upon the defendant to show by what authority he claimed to be coroner of a borough, on the ground that the borough charter had not been properly granted, was refused².

1 See para 251 ante.

2 *R v Taylor* (1840) 11 Ad & El 949; and cf *R v Jones* (1863) 8 LT 503 (where the mayor of a borough was made defendant for a similar purpose).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/7. MISCELLANEOUS AND OBSOLETE PROCEEDINGS/(1) QUO WARRANTO AND PROCEEDINGS IN LIEU OF INFORMATION IN THE NATURE OF QUO WARRANTO/259. Discretion of the court.

259. Discretion of the court.

An information in the nature of a quo warranto¹ was not issued, and an injunction in lieu of it would not be granted, as a matter of course². It was in the discretion of the court to refuse or grant it according to the facts and circumstances of the case³. The court would inquire into the conduct and motives of the applicant⁴, and the court might in its discretion decline to grant a quo warranto information where it would be vexatious to do so⁵, or where an information would be futile in its results⁶, or where there was an alternative remedy which was equally appropriate and effective⁷.

When, therefore, the title to a corporate office was in question, the court, in accordance with these principles, would not grant leave to a relator to file a quo warranto information as a matter of course simply because a reasonable doubt as to the legal validity of the title was shown, but the court would take into consideration the consequences which would be likely to follow should the information be granted, and also all the circumstances of the application⁸. Thus, the court would refuse to disturb the peace and quiet of a corporation by granting leave to file an information where to do so would be merely vexatious, as where there had been an irregularity in the election to the office which was without any material result⁹, or which could not be shown to have been productive of harm¹⁰. Similarly, where the circumstances of the application were such as to throw suspicion upon the motives of the relator¹¹, or where there was ground for supposing that the relator was not the real prosecutor but was the instrument of other persons who were incompetent as relators¹², or that he was applying in collusion with strangers¹³, the court would not grant an information the consequences of which might be to dissolve the corporation. An information would not be refused, however, merely because its effect would be to dissolve the corporation¹⁴, or merely because a person, not a member of the corporation, had been furnishing the means of carrying on proceedings¹⁵, or merely because the application was a friendly proceeding¹⁶.

1 See para 251 ante.

2 *R v Stacey* (1785) 1 Term Rep 1.

3 *Bradley v Sylvester* (1871) 25 LT 459 at 460 per Cockburn CJ; *R v Cousins* (1873) LR 8 QB 216; *R v Speyer, R v Cassel* [1916] 1 KB 595 at 609 per Lord Reading CJ; *Everett v Griffiths* [1924] 1 KB 941 at 958 per McCardie J. See now the Supreme Court Act 1981 s 30(1); and para 153 ante.

4 *Everett v Griffiths* [1924] 1 KB 941 at 959 per McCardie J.

5 *R v Ward* (1873) LR 8 QB 210 at 213 per Blackburn J.

6 *R v Fox* (1858) 8 E & B 939; *Ex p Richards* (1878) 3 QBD 368; *R v Speyer, R v Cassel* [1916] 1 KB 595 at 612 per Lord Reading CJ.

7 *R v Grosvenor* (1733) Kel W 280. Cf *Bradley v Sylvester* (1871) 25 LT 459 at 460 per Cockburn CJ. The remedy of quo warranto was barred where a specific remedy was prescribed by statute in lieu of quo warranto process: see para 251 ante.

8 *R v Wardroper* (1766) 4 Burr 1963; *R v Dawes* (1767) 4 Burr 2022; *R v Stacey* (1785) 1 Term Rep 1; *R v Sargent* (1793) 5 Term Rep 466; *R v Trevenen* (1819) 2 B & Ald 339; *R v Trevenen* (1819) 2 B & Ald 479; *R v Parry* (1837) 6 Ad & El 810; *R v Cousins* (1873) LR 8 QB 216.

9 *R v Ward* (1873) LR 8 QB 210 at 213 per Blackburn J. The application was in respect of the office of a member of a local board of health, and the objection was that the defendant was chairman and therefore returning officer, and accordingly ineligible as a candidate. The court found that the mistake had produced no material result, in as much as the same person would have been chosen had the election been conducted on strictly regular lines, and refused to disturb the peace of the district by filing an information. Blackburn J added, however, that the decision would not apply when the chairman wilfully and contumaciously acted in his own election. Cf *Re Barnes Corpn, ex p Hutter* [1933] 1 KB 668 (mandamus) Orders of mandamus have been renamed mandatory orders. As to mandatory orders see para 133 et seq ante.

10 *R v Cousins* (1873) LR 8 QB 216 (where the rule always acted upon was stated to be that if the right person had been elected, and it was not shown that anyone else had been kept out, nor the result of the election in any way affected, the court would not allow an information to issue). See also *Bradley v Sylvester* (1871) 25 LT 459.

11 *R v Trevenen* (1819) 2 B & Ald 479; but see note 14 infra.

12 *R v Cudlipp* (1796) 6 Term Rep 503.

13 *R v Trevenen* (1819) 2 B & Ald 339; *R v Trevenen* (1819) 2 B & Ald 479 at 482 per Abbott CJ.

14 *R v Morris* (1803) 3 East 213; *R v Trevenen* (1819) 2 B & Ald 479; *R v Parry* (1837) 6 Ad & El 810. Where, however, the motives of the relator were under suspicion, an information would have been refused: *R v Trevenen* (1819) 2 B & Ald 479.

15 *R v Wakelin* (1830) 1 B & Ad 50.

16 *R v Marshall* (1817) 2 Chit 370.

UPDATE

259 Discretion of the court

NOTE 3--Supreme Court Act 1981 now cited as Senior Courts Act 1981: Constitutional Reform Act 2005 Sch 11 para 1 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/7. MISCELLANEOUS AND OBSOLETE PROCEEDINGS/(1) QUO WARRANTO AND PROCEEDINGS IN LIEU OF INFORMATION IN THE NATURE OF QUO WARRANTO/260. Proceedings by the Attorney-General.

260. Proceedings by the Attorney-General.

An information calling upon a corporation, or a number of individuals claiming to be a corporation, to show cause by what authority they, as an aggregate body, claimed to act as a corporation, could only be filed ex officio by the Attorney-General on behalf of the Crown, and not by a private relator¹.

¹ *R v Carmarthen Corpn* (1759) 2 Burr 869; *R v Ogden* (1829) 10 B & C 230. See also *R v Staples* (1867) 9 B & S 928n. As to informations in the nature of quo warranto see para 251 ante.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/7. MISCELLANEOUS AND OBSOLETE PROCEEDINGS/(1) QUO WARRANTO AND PROCEEDINGS IN LIEU OF INFORMATION IN THE NATURE OF QUO WARRANTO/261. Private relators.

261. Private relators.

A private relator could apply for an information against the several members of a corporation on grounds affecting their individual titles, to show by what authority they respectively claimed to exercise their individual functions¹.

A private relator could also apply for an information in cases which concerned the public government, and accordingly an information could be sought by a private relator against a privy counsellor calling upon him to show by what authority he claimed to be a member of the Privy Council².

¹ *R v Carmarthen Corpn* (1759) 2 Burr 869; *R v White* (1836) 5 Ad & El 613. It follows that where the same objection applied to every member of the corporation (as in *R v White* supra) a private relator could in effect assail the whole corporation, and the information would not have been refused simply because to grant it would

have involved the possible dissolution of the corporation: *R v White* supra at 619 per Williams J. As to informations in the nature of quo warranto see para 251 ante.

2 *R v Speyer, R v Cassel* [1916] 1 KB 595; affd on other grounds [1916] 2 KB 858, CA.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/7. MISCELLANEOUS AND OBSOLETE PROCEEDINGS/(1) QUO WARRANTO AND PROCEEDINGS IN LIEU OF INFORMATION IN THE NATURE OF QUO WARRANTO/262. Interest of relator.

262. Interest of relator.

A private relator had to have some interest in the election which he impeached¹. There might, however, be two or more relators, and it seems that the information would have been granted at the instance of any one of them who was duly qualified, although the others were incompetent².

1 *R v Hodge* (1819) 2 B & Ald 344n; *R v Parry* (1837) 6 Ad & El 810; *R v Quayle* (1840) 11 Ad & El 508. See also *R v Wells* (1895) 43 WR 576; *R v Briggs* (1864) 11 LT 372.

2 See Cole's Quo Warranto 172. As to informations in the nature of quo warranto see para 251 ante.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/7. MISCELLANEOUS AND OBSOLETE PROCEEDINGS/(1) QUO WARRANTO AND PROCEEDINGS IN LIEU OF INFORMATION IN THE NATURE OF QUO WARRANTO/263. Impeaching qualification of relator.

263. Impeaching qualification of relator.

The qualification of a person to act as relator could be successfully impeached if it could be shown that, at the time, he acquiesced in the election to which he objected¹; or that he had concurred in another election of like kind with that to which he objected, and which was subject to the same objection²; or that he stood in the same situation as the defendant, so that he would have no title to his own office if his objection to the defendant's election were successful³; or that he was raising an objection which might have been put forward against himself at a previous election⁴; or that, while cognisant of the objection to the defendant's election, he voluntarily so acted in an official capacity as to enable the defendant to exercise the office⁵. It was a fatal objection to a relator that he was a party to an agreement made by the corporation, of which he was a member, not to enforce the byelaw which he invoked in support of his application⁶, or that, while legal adviser to the defendant, he had, since the latter had exercised the office in question, advised him that his election was good⁷.

A relator was not, however, disqualified from making an application for a quo warranto information⁸ because he had attended corporation meetings at which the defendant was present in his official capacity during the period following the latter's election, provided that he was not shown to have concurred in the election⁹. It could not be objected that the relator concurred in an election if he could show that he did so in ignorance of the circumstances which were alleged to render it invalid¹⁰.

- 1 *R v Trevenen* (1819) 2 B & Ald 339; *R v Stacey* (1785) 1 Term Rep 1; and cf *R v Smith* (1790) 3 Term Rep 573.
- 2 *R v Parkyn* (1831) 1 B & Ad 690; *R v Symmons* (1791) 4 Term Rep 223.
- 3 *R v Cudlipp* (1796) 6 Term Rep 503; *R v Bond* (1788) 2 Term Rep 767 (where the defendant was called upon to show by what authority he executed the office of a free burgess, on the ground that he had been improperly sworn in, and it appeared that the relator had been sworn in at the same time and in the same way). See also *R v Cowell* (1825) 6 Dow & Ry KB 336.
- 4 *R v Lofthouse* (1866) LR 1 QB 433.
- 5 *R v Greene* (1842) 2 QB 460.
- 6 *R v Mortlock* (1789) 3 Term Rep 300.
- 7 *R v Payne* (1818) 2 Chit 369.
- 8 See para 251 ante.
- 9 *R v Benney* (1831) 1 B & Ad 684; *R v Clarke* (1800) 1 East 38.
- 10 *R v Slythe* (1827) 9 Dow & Ry KB 181. See also *R v Morris* (1803) 3 East 213.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/7.
MISCELLANEOUS AND OBSOLETE PROCEEDINGS/(2) SCIRE FACIAS/264. Scire facias.

(2) SCIRE FACIAS

264. Scire facias.

Scire facias on the Crown side of the Queen's Bench Division is a proceeding for the purpose of rescinding or repealing Crown grants, charters and franchises¹.

In order to be rescinded by this process, the grant must be of record². The proceedings are conducted through the agency of the Administrative Court, as a successor of the Crown Office³ and, in turn, the Petty Bag Office⁴. If they are initiated by a subject, the fiat of the Attorney-General must be obtained⁵.

If in favour of the applicant, the judgment orders that the Crown grant is to be restored to Chancery, there to be cancelled, in which case the parties attend in Chancery, the seal is cut off and the enrolment vacated⁶.

1 *Peter v Kendal* (1827) 6 B & C 703; *R v Eastern Archipelago Co* (1853) 1 E & B 310 (affd sub nom *Eastern Archipelago Co v R* 2 E & B 856, Ex Ch); *R v Hughes* (1866) LR 1 PC 81. Scire facias on the Crown side of the Queen's Bench Division must be distinguished from the obsolete writ of scire facias used in aid of execution and from scire facias on the revenue side of the Queen's Bench Division which was abolished by the Crown Proceedings Act 1947 s 13, Sch 1 para 1(3) (repealed). As proceedings on the Crown side are not included in the definition of 'civil proceedings' in s 38(2), scire facias on the Crown side is unaffected by Sch 1 para 1(3) (repealed), and is still available: see CORPORATIONS vol 9(2) (2006 Reissue) para 1301; CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) paras 391, 902. In *A-G v Colchester Corp* [1955] 2 QB 207 at 215, [1955] 2 All ER 124 at 127, Lord Goddard CJ intimated that the proceeding would still be available as a remedy where the owner of a franchise of ferry failed in his duty. As to the dissolution of chartered corporations by this proceeding see CORPORATIONS vol 9(2) (2006 Reissue) para 1301.

2 Ie the grant or charter must be sealed or enrolled in a court of record: *R v Hughes* (1866) LR 1 PC 81.

3 See *Practice Direction (Administrative Court: Establishment)* [2000] 4 All ER 1071, [2000] 1 WLR 1654.

4 See RSC dated 30 January 1889.

5 Robertson's Civil Proceedings by and against the Crown 537. As to the Attorney-General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) para 529 et seq.

6 *Bynner v R* (1846) 9 QB 523, Ex Ch; *R v Eastern Archipelago Co* (1853) 1 E & B 310; affd sub nom *Eastern Archipelago Co v R* 2 E & B 856, Ex Ch.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/7. MISCELLANEOUS AND OBSOLETE PROCEEDINGS/(3) INQUISITIONS OF OFFICE AND ESCHEAT/265. Inquisitions of office and of escheat.

(3) INQUISITIONS OF OFFICE AND ESCHEAT

265. Inquisitions of office and of escheat.

Inquisition of office was a procedure necessary to complete the title of the Crown where the Crown exercised its right at common law to forfeit the property within the realm of enemy aliens¹. In both the 1914-18 and 1939-45 world wars the common law right of the Crown was suspended by legislation inconsistent with its exercise².

As a result of the abolition of escheat³, inquisitions of escheat, by which the title of the Crown to the property of intestates who died without heirs was ascertained⁴, no longer take place.

1 See *A-G v Weeden and Shales* (1699) Park 267; *Re Ferdinand, Ex-Tsar of Bulgaria*[1921] 1 Ch 107, CA. As to the confiscation of enemy alien property see WAR AND ARMED CONFLICT vol 49(1) (2005 Reissue) para 585.

2 See *Re Ferdinand, Ex-Tsar of Bulgaria*[1921] 1 Ch 107, CA; *Bank voor Handel en Scheepvaart NV v Administrator of Hungarian Property*[1954] AC 584, [1954] 1 All ER 969, HL.

3 Escheat to the Crown or the Duchy of Lancaster or the Duke of Cornwall was abolished, and a right to bona vacantia substituted, by the Administration of Estates Act 1925 ss 45(1)(d), 46(1)(vi) (see CROWN PROPERTY vol 12(1) (Reissue) paras 233, 237). As to escheat and bona vacantia see CROWN PROPERTY vol 12(1) (Reissue) para 231 et seq.

4 See the Escheat (Procedure) Act 1887 s 2; Escheat Procedure Rules 1889, SR & O Rev 1903, IV p 1; Escheat Procedure (Duchy of Lancaster) Rules 1910, SR & O 1913, p 2351.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/7. MISCELLANEOUS AND OBSOLETE PROCEEDINGS/(4) WRITS OF SUPERSEDEAS AND PROCEDENDO/266. Writs of supersedeas and procedendo.

(4) WRITS OF SUPERSEDEAS AND PROCEDENDO

266. Writs of supersedeas and procedendo.

Writs of supersedeas and procedendo were formerly issued to return to the inferior court to be dealt with a cause or matter removed into the High Court by certiorari (now a quashing order¹) or to restore an order of an inferior court where an appeal against certiorari to quash was allowed. In the former case an order of the court would now, it is thought, be made in the

proceedings for a quashing order and in the latter it seems that the successful appeal automatically effects the restoration of the quashed order².

1 See para 117 note 1 ante. As to quashing orders see para 123 et seq post. As to inferior courts see COURTS vol 10 (Reissue) para 851 et seq.

2 See the Third and Final Report of the Business of Courts Committee 1936 (Cmd 5066); *Great Western Rly Co v West Midland Traffic Area Licensing Authority* [1936] AC 128, HL.

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/7. MISCELLANEOUS AND OBSOLETE PROCEEDINGS/(5) CERTIORARI FOR THE PURPOSE OF EXECUTION OR COERCIVE PROCESS/267. Certiorari in aid of execution.

(5) CERTIORARI FOR THE PURPOSE OF EXECUTION OR COERCIVE PROCESS

267. Certiorari in aid of execution.

A right formerly existed at common law and was subsequently enlarged and superseded by statute¹ to remove the judgments of inferior courts of civil jurisdiction into the High Court by certiorari for execution². The provisions of the acts conferring such a right were repealed as obsolete by the Administration of Justice Act 1965³.

1 Inferior Courts Act 1779 s 4 (repealed); Judgments Act 1838 s 22 (repealed); Borough and Local Courts of Record Act 1872 Schedule para 9 (repealed). Similar powers were conferred by the County Courts Act 1934 s 136 (repealed).

2 As to inferior courts see COURTS vol 10 (Reissue) para 851 et seq.

3 Administration of Justice Act 1965 s 34(1), Sch 2 (repealed). The County Courts Act 1934 s 136 was repealed by the Administration of Justice Act 1956 ss 34(3), 57(2), Sch 2 (repealed), and was not re-enacted or replaced in the County Courts Act 1959 (now consolidated in the County Courts Act 1984 (see COURTS)).

Halsbury's Laws of England/ADMINISTRATIVE LAW (VOLUME 1(1) (2001 REISSUE))/7. MISCELLANEOUS AND OBSOLETE PROCEEDINGS/(5) CERTIORARI FOR THE PURPOSE OF EXECUTION OR COERCIVE PROCESS/268-300. Removal of sentence.

268-300. Removal of sentence.

At common law, the sentence of any court of criminal jurisdiction may be removed into the High Court by a quashing order for the purpose of execution, as of course, on the application of the Attorney-General on behalf of the Crown¹, but in practice this is obsolete.

1 *R v Garside and Mosley* (1834) 2 Ad & El 266. See also *R v Rogers* (1765) 3 Burr 1809; *RC's Case* (1629) Cro Car 175.

---- End of Request ----

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